



CITY OF BUFFALO

DEPARTMENT OF LAW

EXHIBIT

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ORIGINAL

1

VIDEO DEPOSITION
JENNY VELEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-402

THE CITY OF BUFFALO,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),

Defendants.

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DEPARTMENT OF LAW

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MAR 13 2020

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1 Video deposition of JENNY VELEZ,
2 Defendant, taken pursuant to the Federal Rules of
3 Civil Procedure, in the offices of JACK W. HUNT &
4 ASSOCIATES, INC., 1120 Liberty Building, Buffalo,
5 New York, on February 26, 2020, commencing at
6 10:11 a.m., before LYNNE E. DiMARCO, Notary Public.

7
8 APPEARANCES: RUPP BAASE
9 PFALZGRAF & CUNNINGHAM, LLC,
10 By CHAD DAVENPORT, ESQ.,
11 1600 Liberty Building,
12 Buffalo, New York 14202,
13 (716) 854-3400,
14 davenport@ruppbaase.com,
15 Appearing for the Plaintiff.

16
17 TIMOTHY A. BALL, ESQ.,
18 Corporation Counsel,
19 By MAEVE E. HUGGINS, ESQ.,
20 Assistant Corporation Counsel,
21 1137 City Hall,
Buffalo, New York 14202,
(716) 851-4334,
mhuggins@city-buffalo.com,
Appearing for the Defendants.

PRESENT: JAMES KISTNER
LAUREN McDERMOTT
PATRICK F. MORRIS, Videographer

10:02:14

10:11:41 22 MR. DAVENPORT: Chad Davenport here on

10:11:47 23 behalf of the plaintiff Jim Kistner.

10:11:49 1 MS. HUGGINS: Maeve Huggins on behalf of the
10:11:49 2 defendants.

10:11:49 3

10:12:01 4 J E N N Y V E L E Z, 693 East Ferry Street,
10:12:05 5 Buffalo, New York 14211, after being duly called
10:12:07 6 and sworn, testified as follows:

10:12:07 7

10:12:07 8 EXAMINATION BY MR. DAVENPORT:

10:12:07 9

10:12:09 10 Q. Good morning, Ms. Velez.

10:12:12 11 A. Good morning.

10:12:13 12 Q. My name is Chad Davenport. I'm with
10:12:13 13 the law firm Rupp Baase Pfalzgraf Cunningham and we
10:12:15 14 represent the plaintiff Jim Kistner.

10:12:17 15 So we are here today to talk about events
10:12:19 16 that transpired on January 1st of 2017. Before we
10:12:24 17 start, have you ever given sworn testimony before?

10:12:26 18 A. Yes, I have.

10:12:27 19 Q. And was that in a civil matter or was
10:12:31 20 that in a criminal matter?

10:12:32 21 A. Criminal.

10:12:33 22 Q. Okay. Have you ever given sworn
10:12:35 23 testimony in front of -- in a civil matter before?

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10:12:37 1 A. No, I have not.

10:12:38 2 Q. Okay. So it's the same thing, your
10:12:40 3 testimony is under oath today. And do you
10:12:44 4 recognize that your testimony is sworn under oath
10:12:47 5 today?

10:12:47 6 A. Yes.

10:12:47 7 Q. Okay. So our discussion today is being
10:12:51 8 transcribed -- transcribed by a stenographer. In
10:12:54 9 order to have an accurate transcript I just ask
10:12:57 10 that you wait until I finish my question before you
10:13:01 11 answer. And I will wait until you finish your
10:13:03 12 answer before I ask my next question.

10:13:07 13 In addition, I just ask that you give verbal
10:13:10 14 answers to each of the question that's -- each of
10:13:12 15 the questions that is asked, noddings of the head
10:13:14 16 or shaking your head, uh-huh, uh-uh won't be able
10:13:19 17 to be tran -- transcribed on the record. So we
10:13:22 18 just want to make sure that we have an accurate
10:13:25 19 record.

10:13:25 20 If at any time you do not understand a
10:13:28 21 question, you can simply ask me to rephrase the
10:13:32 22 question and I can rephrase it for you, but I do
10:13:35 23 ask that if you understand the question to please

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10:13:38 1 answer it to the best of your ability. Can you do
10:13:41 2 that for me?

10:13:41 3 A. Yes.

10:13:41 4 Q. And if at any time you need a break,
10:13:41 5 just ask me and we can absolutely stop and take a
10:13:44 6 break for as long as you need.

10:13:45 7 A. Okay. Thank you.

10:13:46 8 MS. HUGGINS: Before we get started, we'll
10:13:49 9 read and sign and I would request 45 days to do so.

10:13:51 10 MR. DAVENPORT: And that's fine.

10:13:52 11 MS. HUGGINS: Thank you.

10:13:55 12 BY MR. DAVENPORT:

10:13:56 13 Q. Do you have any military service?

10:13:58 14 A. No.

10:13:59 15 Q. Okay. Have you ever been charged or
10:14:02 16 convicted with a crime?

10:14:03 17 A. No.

10:14:04 18 Q. What is your highest level of
10:14:07 19 education?

10:14:07 20 A. I have some graduate level.

10:14:09 21 Q. Okay. And what did you go to graduate
10:14:14 22 school for?

10:14:14 23 A. Adult education.

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10:14:16 1 Q. Okay. And where did you go to graduate
10:14:18 2 school?

10:14:18 3 A. Buffalo State College.

10:14:20 4 Q. Did you go to undergrad as well?

10:14:22 5 A. Yes.

10:14:23 6 Q. And what did you go for undergrad?

10:14:25 7 A. Criminal justice.

10:14:27 8 Q. And was that a four-year degree?

10:14:28 9 A. Yes, I did two years at ECC, got an
10:14:31 10 associate's in criminal justice, followed up at
10:14:32 11 Buff State, got a BS in criminal justice. And then
10:14:34 12 I continued on graduate school, but didn't complete
10:14:37 13 it.

10:14:37 14 Q. Okay. Did you go to high school?

10:14:40 15 A. I did.

10:14:41 16 Q. And where did you go to high school?

10:14:42 17 A. Hutchinson Central Technical High
10:14:46 18 School.

10:14:46 19 Q. Okay. So we discussed a little bit
10:14:54 20 about your background in terms of education. When
10:14:57 21 did you join the Buffalo Police Academy?

10:15:00 22 A. January of 2013.

10:15:02 23 Q. Okay. And did you start right away

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10:15:06 1 with the Buffalo Police Department or did you have
10:15:08 2 to go to training before you started with the
10:15:12 3 Buffalo Police Department?

10:15:13 4 A. I had to attend the police academy.

10:15:16 5 Q. Okay. And was that in 2013?

10:15:20 6 A. January, yes.

10:15:20 7 Q. January 2013.

10:15:20 8 A. January 2013.

10:15:20 9 Q. Okay. And then when did you start with
10:15:22 10 the Buffalo Police Department?

10:15:23 11 A. I started my field training in June of
10:15:26 12 2013.

10:15:26 13 Q. Okay.

10:15:27 14 A. June 7th, I believe. I'm not certain
10:15:30 15 on the exact date, but I believe it was June 7th.

10:15:32 16 Q. Okay. When you started your initial
10:15:34 17 training, did you have a plan to go to the City of
10:15:36 18 Buffalo Police Department?

10:15:37 19 A. Yes, I was hired by the City of Buffalo
10:15:40 20 and then placed into the police academy.

10:15:43 21 Q. Okay. And that was your plan before
10:15:45 22 you entered the ECC training beforehand?

10:15:48 23 A. Yes.

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10:15:48 1 Q. Okay. Did you have a plan of what
10:15:50 2 district you wanted to work in at the time?

10:15:52 3 A. No.

10:15:52 4 Q. Okay. Did you start in -- well, what
10:15:56 5 district did you start in?

10:15:57 6 A. C.

10:15:58 7 Q. C District. And then how long were you
10:16:00 8 there for?

10:16:01 9 A. I've been in C the entirety of my
10:16:04 10 career.

10:16:04 11 Q. Okay. So that's from 2013 to 2020?

10:16:07 12 A. Correct.

10:16:07 13 Q. Any gaps in between?

10:16:09 14 A. I was assigned to A District as a
10:16:12 15 detective for a couple weeks, but I never actually
10:16:14 16 went into the district. So by the time I was back
10:16:15 17 to work I was in Charlie. I was transferred back
10:16:19 18 to Charlie.

10:16:20 19 Q. Okay. Did you have any sort of
10:16:21 20 training, field training, before you were off on
10:16:24 21 your own as a police officer?

10:16:26 22 A. Yes.

10:16:26 23 Q. And that was after you completed

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10:16:28 1 training with the Buffalo Police Academy?

10:16:30 2 A. Yes.

10:16:31 3 Q. Okay. And how long was that field
10:16:32 4 training for?

10:16:33 5 A. I believe it's 16 weeks.

10:16:35 6 Q. Okay. Who did you primarily go with
10:16:39 7 for your field training?

10:16:40 8 A. I was assigned to at the time Officer
10:16:44 9 Darrel Williams.

10:16:44 10 Q. Okay. And was that for the entirety of
10:16:46 11 the 16 weeks?

10:16:46 12 A. Yes, occasionally when he was off of
10:16:49 13 work, I would be assigned to another officer, but I
10:16:53 14 was primarily with him for the majority of the
10:16:54 15 time.

10:16:54 16 Q. Okay. Approximately how many hours
10:16:56 17 were you working during those 16 weeks?

10:17:00 18 A. I'm 40 hours a week at 10 hours a day.

10:17:03 19 Q. Okay. So that would have been four
10:17:05 20 shifts a week then?

10:17:06 21 A. Correct.

10:17:07 22 Q. Okay.

10:17:07 23 MS. HUGGINS: Just slow down, wait for --

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10:17:11 1 THE WITNESS: Oh, I'm sorry.

10:17:13 2 BY MR. DAVENPORT:

10:17:13 3 Q. Where -- what shift did you
10:17:18 4 predominantly work during those 16 weeks?

10:17:21 5 A. 6:00 a.m. to 1600 hours or 4 p.m.

10:17:26 6 Q. Okay. And did you maintain that
10:17:28 7 schedule after your 16 weeks?

10:17:29 8 A. No.

10:17:30 9 Q. What did you switch to?

10:17:31 10 A. I was switched to MP5 overnights.

10:17:34 11 Q. Okay. And then how long did you work
10:17:36 12 overnights for?

10:17:39 13 A. I was overnights for -- I don't recall,
10:17:44 14 because we were assigned for a short amount of time
10:17:47 15 and then there was a manpower change and I was put
10:17:50 16 on afternoons. Possibly six months. I'm not
10:17:57 17 certain.

10:17:57 18 Q. Okay. No, that's okay.

10:17:59 19 A. Maybe longer.

10:17:59 20 Q. And then you were saying that you were
10:18:03 21 switched to afternoons after the night shift?

10:18:05 22 A. Yes.

10:18:05 23 Q. Okay. And how long did you work

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10:18:06 1 afternoon shifts for?

10:18:07 2 A. I know I went to days in January of
10:18:10 3 2015, so maybe another six months to a year on
10:18:14 4 afternoons.

10:18:14 5 Q. Okay. And did you work the day shift
10:18:17 6 from 2015 forward?

10:18:19 7 A. Yes.

10:18:19 8 Q. And you were --

10:18:20 9 A. Oh, excuse me. I was -- when I was
10:18:21 10 promoted to detective, my shift changed. And then
10:18:25 11 when I was promoted to lieutenant, my
10:18:27 12 shift -- shifts changed as well.

10:18:28 13 Q. Okay. When approximately were you
10:18:32 14 promoted detective?

10:18:33 15 A. November of 2017.

10:18:35 16 Q. Okay. And when were you promoted to
10:18:40 17 lieutenant?

10:18:40 18 A. July of 2018.

10:18:42 19 Q. Were you working as a detective up
10:18:46 20 until the point that you were promoted to
10:18:48 21 lieutenant?

10:18:48 22 A. Yes.

10:18:50 23 Q. Okay. And so, I'm sorry, what shifts

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10:18:54 1 were you working for as you were a detective?

10:18:57 2 A. Yes.

10:18:57 3 Q. And that was with the A District?

10:18:59 4 A. I was assigned to A, but I didn't

10:19:03 5 actually go in and physically work in there. I was

10:19:05 6 bark in Charlie.

10:19:07 7 Q. Okay.

10:19:08 8 A. Within a couple of weeks.

10:19:09 9 Q. Okay. Okay. So you worked as a

10:19:09 10 detective with the C District as well then?

10:19:09 11 A. Yes.

10:19:10 12 Q. Okay. And what shift were you working

10:19:13 13 as a detective?

10:19:14 14 A. Initially I was afternoons.

10:19:16 15 Q. Okay.

10:19:16 16 A. And then within a few months I was on

10:19:19 17 days.

10:19:19 18 Q. Okay. As a lieutenant, what shifts do

10:19:24 19 you currently work?

10:19:24 20 A. 6 to 4.

10:19:26 21 Q. 6 to 4. Did you ever work the

10:19:28 22 afternoon shifts as a lieutenant?

10:19:29 23 A. Yes.

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10:19:29 1 Q. Okay. And how long approximately did
10:19:32 2 you work the afternoon shift for?

10:19:40 3 A. About six months, I believe.

10:19:44 4 Q. So that now correct me if I'm wrong,
10:19:47 5 that would have put you in early of 2019 when you
10:19:51 6 started to work the day shift as a lieutenant?

10:19:56 7 A. I've changed around so much, let
10:19:59 8 me just --

10:19:59 9 Q. Sure.

10:20:00 10 A. Let me think about it a little bit. I
10:20:06 11 was promoted in July, I was on afternoons, yeah. I
10:20:14 12 would say early, early 2019.

10:20:16 13 Q. Okay.

10:20:16 14 A. I was on days.

10:20:17 15 Q. Okay. So I'm going to show you what
10:20:22 16 has been marked as Exhibit 16. I'm sorry. I don't
10:20:29 17 have an extra copy.

10:20:30 18 MS. HUGGINS: I have one.

10:20:32 19 BY MR. DAVENPORT:

10:20:33 20 Q. So do you recognize this document?

10:20:34 21 A. Yes.

10:20:35 22 Q. Okay. And what do you recognize that
10:20:37 23 to be?

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10:20:37 1 A. A shift summary report.

10:20:39 2 Q. Okay. Is the date on there -- what's
10:20:44 3 the date on there?

10:20:44 4 A. 1/1 of 2017.

10:20:47 5 Q. Okay. Now, reading through this list
10:20:49 6 of officers is there anyone that's on this list who
10:20:53 7 still currently works in C District?

10:21:01 8 A. Yes.

10:21:01 9 Q. Okay. And who is that?

10:21:05 10 A. Officer David Santana, myself,
10:21:10 11 Lieutenant Anthony McHue. She's parole on here,
10:21:15 12 but she's now a detective, Erin Haidinger, and that
10:21:19 13 would be all.

10:21:19 14 Q. Okay. Now, just because I don't really
10:21:22 15 understand I guess the hierarchy of rankings, where
10:21:26 16 does a detective fall in terms of the ranking or
10:21:31 17 hierarchy for detective as opposed to a lieutenant?

10:21:31 18 A. Well, detective is on the investigative
10:21:33 19 side. Where I'm the supervisory side.

10:21:36 20 Q. Okay.

10:21:37 21 A. But we would oversee detectives, we
10:21:39 22 would be responsible as a lieutenant to call them
10:21:43 23 out. So they're investigative, we're supervisory.

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10:21:46 1 Q. Okay. Okay. So now you said Officer
10:21:55 2 David Santana is still currently working in the C
10:22:00 3 District. Is he still -- has his role changed?
10:22:02 4 A. No.
10:22:02 5 Q. He's still a police officer?
10:22:04 6 A. Yes.
10:22:04 7 Q. Okay. What about for Anthony McHue, is
10:22:08 8 he a lieutenant still?
10:22:09 9 A. Yes.
10:22:09 10 Q. Okay. And I believe you said for
10:22:12 11 Ms. Haidinger she's now a detective?
10:22:15 12 A. Yes.
10:22:15 13 Q. Okay. And who's, I'm sorry, the fourth
10:22:18 14 person who's still working in the C District?
10:22:23 15 A. One, two, three, four. Kevin Quinn,
10:22:24 16 he's a patrol officer, he's also still in the C
10:22:30 17 District.
10:22:30 18 Q. Okay.
10:22:30 19 A. And then I had said myself.
10:22:33 20 Q. Okay. Now, do you know what shift
10:22:36 21 Mr. McHue is working?
10:22:37 22 A. He's days.
10:22:38 23 Q. He's days. So do you and Lieutenant

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10:22:44 1 McHue work the same day shifts?

10:22:46 2 A. Currently, yes.

10:22:47 3 Q. Okay. And you work on the same days as
10:22:50 4 well?

10:22:50 5 A. Yes.

10:22:51 6 Q. Okay. Are there always two lieutenants
10:22:54 7 who are working at any given time?

10:22:56 8 A. There are two, on my particular wheel
10:22:59 9 there are two assigned, but we can work with just
10:23:03 10 one if one is out for the day.

10:23:04 11 Q. Okay. Are there different groups, I
10:23:09 12 guess, of C District police officers? Do some work
10:23:13 13 some days while others work another day?

10:23:16 14 A. In our district we have two wheels, we
10:23:18 15 have an A wheel and a B wheel, so when A wheel is
10:23:22 16 working, the B wheel is off, and that's all three
10:23:25 17 shifts.

10:23:25 18 And when the B wheel is working the A wheel
10:23:26 19 is off, because we work all year-round and they
10:23:28 20 always have to be covered, so we just have two
10:23:30 21 sides. So when the one side is off, the other side
10:23:32 22 is working.

10:23:33 23 Q. Okay. Does -- do you work as a

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10:23:38 1 lieutenant for both the A wheel and the B wheel?

10:23:40 2 A. No, I work on -- there's a discrepancy
10:23:43 3 on which one is labeled the A and the B, but I work
10:23:44 4 on the A side.

10:23:45 5 Q. Okay. And then does Lieutenant McHue
10:23:48 6 work on the B side?

10:23:50 7 A. No, he is on the A side as well.

10:23:53 8 Q. Okay. Who is the lieutenant that works
10:23:55 9 on the B side?

10:23:56 10 A. It is Lieutenant Bradford Pitts
10:24:01 11 and -- and Lieutenant Ibrahim Abdul-Wahed.

10:24:06 12 Q. Thank you.

10:24:09 13 A. You're welcome.

10:24:12 14 Q. So you said that you worked the
10:24:14 15 afternoon shift as a lieutenant in the C District,
10:24:16 16 correct?

10:24:16 17 A. Yes.

10:24:17 18 Q. Who was the other lieutenant that you
10:24:19 19 were working with at the time?

10:24:21 20 A. Leonetta Baskerville.

10:24:23 21 Q. And how long did you work with her for?

10:24:26 22 A. The entirety of the time I was on
10:24:28 23 afternoons, so I believe it was approximately six

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10:24:31 1 months.

10:24:31 2 Q. Okay.

10:24:31 3 A. I could be a little bit off on my times
10:24:37 4 it's a lot to try to remember on the shift, how
10:24:37 5 long I was on the shift.

10:24:37 6 Q. And so for purposes of the deposition
10:24:40 7 it's perfectly fine if you're not specific and
10:24:41 8 exactly right. I'm just asking for you to give
10:24:44 9 answers to the best of your ability.

10:24:46 10 A. Okay.

10:24:47 11 Q. As a detective, who was your lieutenant
10:24:49 12 at the time?

10:24:58 13 A. I apologize, we've had so much movement
10:25:01 14 and promotions, I'm trying to recall who was my
10:25:05 15 lieutenant when I was an afternoons. I don't
10:25:13 16 recall who was my lieutenant an afternoons.

10:25:19 17 Q. And that's okay if you don't recall.

10:25:22 18 A. We had a whole shift -- a whole shift
10:25:24 19 change. I cannot recall who was -- I -- I don't
10:25:27 20 recall who was the lieutenant.

10:25:28 21 Q. And that's okay. So after lieutenant
10:25:32 22 who was next on the hierarchy after in charge of
10:25:37 23 the C District?

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10:25:37 1 A. It would be the captain.

10:25:39 2 Q. Okay. And is the captain in charge of
10:25:42 3 just the C District or does he have other districts
10:25:45 4 that he overlooks as well?

10:25:47 5 A. It depends on who the captain is -- or,
10:25:49 6 I'm sorry, where the captain is assigned. We have
10:25:50 7 district captains, so if a captains in C District
10:25:52 8 are just for C District.

10:25:53 9 Q. And currently who is the C District
10:25:57 10 captain?

10:25:58 11 A. Jason Whitenight and Joseph Langdon.

10:26:05 12 Q. And were they the captains in January
10:26:07 13 of 2017?

10:26:09 14 A. I don't believe so.

10:26:10 15 Q. Okay. Do you recall who the captains
10:26:13 16 were in C District at that time?

10:26:15 17 A. I do not.

10:26:16 18 Q. Okay. As a lieutenant, do you report
10:26:19 19 for the captain?

10:26:20 20 A. Yes.

10:26:21 21 Q. And how often do you communicate with
10:26:23 22 the captain?

10:26:24 23 A. The captain that works on my side is

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10:26:27 1 overnight, he works the night shift, so I will see
10:26:31 2 him in passing in the morning if he's still there.
10:26:34 3 So once or twice in a two-week period I'll cross
10:26:39 4 paths with him.

10:26:39 5 Q. Okay. Now, as a lieutenant, you're in
10:26:42 6 charge of briefing the police officers before they
10:26:44 7 start their shift, correct?

10:26:46 8 A. Correct.

10:26:46 9 Q. What kinds of things do you discuss
10:26:48 10 during that briefing?

10:26:49 11 A. We discuss any legal updates that we've
10:26:52 12 been provided by the department. We discuss any
10:26:54 13 persons of interest that the detectives may be
10:26:57 14 looking for, or warrant arrests and anything
10:27:01 15 pertinent to officer safety, and then we may review
10:27:05 16 vehicle assignments.

10:27:06 17 Q. Okay. Now, do you recall on
10:27:10 18 January 1st of 2017 was there some sort of briefing
10:27:15 19 before you started your shift?

10:27:16 20 A. Yes.

10:27:16 21 Q. And who gave that briefing?

10:27:20 22 A. Lieutenant McHugh.

10:27:21 23 Q. Okay. Do you remember what was said

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10:27:25 1 during that briefing?

10:27:25 2 A. I do not.

10:27:26 3 Q. Okay. Now, you talked about in your
10:27:29 4 experience as a lieutenant you would give legal
10:27:32 5 updates. What sorts of legal updates would you
10:27:35 6 give to the police officers before they began their
10:27:38 7 shift?

10:27:38 8 MS. HUGGINS: Form. You may answer.

10:27:39 9 THE WITNESS: For example, we recently were
10:27:42 10 experiencing raise the age law changes, so we would
10:27:44 11 just remind officers in dealing with juveniles and
10:27:47 12 any updates or changes in procedures as we were
10:27:50 13 getting into this new process.

10:27:52 14 BY MR. DAVENPORT:

10:27:54 15 Q. What other sorts of new processes or
10:27:56 16 new updates have you had to brief the officers on
10:28:00 17 as a lieutenant?

10:28:02 18 A. That was the one that first came to my
10:28:06 19 mind with the raise the age. I -- I don't recall
10:28:07 20 specifically anything else now.

10:28:08 21 Q. How often are you giving these sorts of
10:28:12 22 legal updates as a lieutenant?

10:28:14 23 A. As often as the department gives them

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10:28:17 1 out to us and requires it.

10:28:18 2 Q. And approximately how often is that?

10:28:20 3 MS. HUGGINS: Form. You may answer.

10:28:21 4 THE WITNESS: It depends on what laws come
10:28:24 5 out and how often legislations pass and it would
10:28:30 6 depend on that, not us.

10:28:32 7 BY MR. DAVENPORT:

10:28:33 8 Q. So you've been working as a lieutenant
10:28:35 9 since June of 2018, correct, or was it July of
10:28:41 10 2018?

10:28:41 11 A. July of 2018.

10:28:42 12 Q. July of 2018. So since July of 2018
10:28:47 13 approximately how many times have you had to give
10:28:50 14 these sorts of legal update briefings to your
10:28:55 15 police officers?

10:28:57 16 A. I can't give a specific number.

10:28:59 17 Q. Okay. Is it more than 10?

10:29:03 18 A. I would say more than 10.

10:29:05 19 Q. Is it more than 20?

10:29:08 20 A. Possibly.

10:29:10 21 Q. Okay. Would it be more than 50?

10:29:14 22 A. I wouldn't say more than 50.

10:29:16 23 Q. Okay. Now, you also said that part of

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10:29:21 1 your briefing is persons of interest. Would that
10:29:25 2 be just within the C District or would that be
10:29:27 3 other districts as well?

10:29:28 4 A. Citywide.

10:29:30 5 Q. Citywide. How often do you get
10:29:36 6 briefings where you discuss a person of interest?

10:29:38 7 MS. HUGGINS: Form. You may answer.

10:29:40 8 THE WITNESS: Daily.

10:29:41 9 BY MR. DAVENPORT:

10:29:42 10 Q. Are they typically the same persons or
10:29:46 11 do you not repeat those types of briefings? And,
10:29:49 12 I'm sorry, I'll rephrase my question.

10:29:52 13 After you have given an update regarding a
10:29:55 14 person of interest, do you then update the officers
10:29:58 15 each day until that person of interest is found or
10:30:02 16 located?

10:30:02 17 A. We will revisit it if there's been a
10:30:05 18 change in the status. If they've been found or
10:30:08 19 located or we received new information or if
10:30:11 20 they're no longer a person of interest.

10:30:13 21 Q. Okay. Has Mr. Kistner ever come up as
10:30:16 22 a person of interest?

10:30:17 23 A. Not that I can recall.

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10:30:19 1 Q. And that would be in your capacity as a
10:30:21 2 police officer and a lieutenant?

10:30:22 3 A. Correct.

10:30:25 4 Q. Okay. So since you started as
10:30:27 5 lieutenant over at C District do you communicate
10:30:31 6 with your police officers?

10:30:32 7 A. Yes.

10:30:32 8 Q. Okay. How do you communicate with your
10:30:36 9 police officers?

10:30:38 10 A. Can you clarify?

10:30:40 11 Q. Do you communicate over the radio?

10:30:42 12 A. Yes.

10:30:42 13 Q. Okay. Now, do you communicate during
10:30:47 14 work about work-related issues, do you communicate
10:30:51 15 by any other method besides radio?

10:30:53 16 A. Yes.

10:30:54 17 Q. And how is that?

10:30:56 18 A. In person or by phone.

10:30:58 19 Q. Okay. And is that by text messages?

10:31:00 20 A. Usually not.

10:31:01 21 Q. Phone calls?

10:31:02 22 A. Yes.

10:31:02 23 Q. Okay. How often do you use phone calls

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10:31:05 1 to communicate with your police officers about
10:31:07 2 work-related incidents?

10:31:09 3 A. It varies throughout the day.

10:31:11 4 Q. Okay. Is it daily?

10:31:12 5 A. Yes.

10:31:16 6 Q. Okay. How many times daily
10:31:18 7 approximately, is it more than once, or --

10:31:21 8 A. I couldn't give a specific number. It
10:31:25 9 changes day-to-day. Every day is different.

10:31:27 10 Q. Okay. Do you know if Lieutenant McHugh
10:31:29 11 communicates with his police officers by phone?

10:31:33 12 A. You would have to ask Lieutenant
10:31:33 13 McHugh.

10:31:33 14 Q. Okay. Are you aware of any other
10:31:33 15 lieutenants who communicate with their officers by
10:31:36 16 phone?

10:31:36 17 A. You would have to ask the other
10:31:36 18 lieutenants.

10:31:36 19 THE REPORTER: You have to speak up for me.

10:31:36 20 THE WITNESS: I'm sorry. Yeah, I would ask
10:31:36 21 other lieutenants.

10:31:43 22 BY MR. DAVENPORT:

10:31:43 23 Q. Okay. Do you know if that is part of

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10:31:46 1 the policies and procedures to communicate with the
10:31:48 2 other officers by phone?

10:31:49 3 A. I don't specifically recall reading
10:31:51 4 that in our policy and procedure.

10:31:54 5 Q. Okay. As a lieutenant, did you have to
10:31:56 6 get any sort of training before you were promoted?

10:31:59 7 A. Yes.

10:32:00 8 Q. Okay. And what sorts of training do
10:32:03 9 you remember specifically to become a lieutenant?

10:32:06 10 A. It's not training to become a
10:32:09 11 lieutenant. Once we're promoted lieutenant we did
10:32:11 12 a short training on our duties and how -- and what
10:32:17 13 was our -- what -- excuse me, what our requirements
10:32:19 14 were as lieutenants and to include new
10:32:22 15 documentation, supervisory reports, things of that
10:32:25 16 nature.

10:32:27 17 Q. Now, in terms of accidents involving
10:32:32 18 police vehicles, did you get any sort of training
10:32:35 19 involving, you know, those types of incidents?

10:32:37 20 MS. HUGGINS: Form. You may answer.

10:32:38 21 THE WITNESS: As a lieutenant, no. As a
10:32:42 22 patrol officer, yes.

10:32:43 23 BY MR. DAVENPORT:

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10:32:44 1 Q. What kind of training did you get for
10:32:46 2 accidents involving police vehicles?

10:32:48 3 A. For -- the procedure for accidents
10:32:53 4 involving police vehicles would be to as a patrol
10:32:56 5 officer notify your supervisor and then proceed
10:33:01 6 with what the supervisor recommends.

10:33:04 7 Q. Okay. And who would the supervisor be
10:33:08 8 that you would contact?

10:33:09 9 A. As a lieutenant or as a patrol officer?

10:33:12 10 Q. As a patrol officer.

10:33:12 11 A. My immediate supervisor, the
10:33:12 12 lieutenant.

10:33:12 13 Q. Okay. Now, as a lieutenant, what would
10:33:20 14 your responsibilities be once a police officer has
10:33:22 15 contacted you about a -- an accident involving a
10:33:26 16 police vehicle?

10:33:27 17 MS. HUGGINS: Form. You may answer.

10:33:28 18 THE WITNESS: Depending on the facts of
10:33:32 19 the -- I -- I would need more facts regarding the
10:33:35 20 incident, just the patrol, what happened, what
10:33:38 21 exactly happened with that vehicle and the officer.
10:33:41 22 How was the vehicle involved in an accident.

10:33:44 23 BY MR. DAVENPORT:

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10:33:45 1 Q. So after you interview the officer and
10:33:47 2 you get the facts that you need to make your
10:33:50 3 determination, if that officer said that they
10:33:52 4 collided with another vehicle, what would your next
10:33:55 5 steps be?

10:33:56 6 MS. HUGGINS: Form. You may answer.

10:33:57 7 THE WITNESS: It's just that would be a true
10:34:00 8 city involved accident and I would have to call out
10:34:03 9 our accident investigation unit as well as internal
10:34:06 10 affairs.

10:34:06 11 BY MR. DAVENPORT:

10:34:07 12 Q. Okay. Now, let's say that that patrol
10:34:11 13 vehicle contacted a person, would the procedure
10:34:13 14 change?

10:34:13 15 MS. HUGGINS: Form.

10:34:14 16 THE WITNESS: It would depend on what
10:34:16 17 contact meant.

10:34:17 18 BY MR. DAVENPORT:

10:34:18 19 Q. Okay. Let's say that that police
10:34:20 20 vehicle struck an individual and knocked that
10:34:20 21 individual over, what would the next steps be?

10:34:23 22 A. Excuse me. Can you repeat that?

10:34:23 23 MS. HUGGINS: Form. You may answer.

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10:34:25 1 BY MR. DAVENPORT:

10:34:25 2 Q. Let's say that a patrol vehicle struck
10:34:26 3 an individual and that individual fell to the
10:34:30 4 ground, what would the next steps be as a
10:34:33 5 lieutenant?

10:34:33 6 A. Again, if that was just the fact
10:34:34 7 pattern that was given, it's just kind of
10:34:36 8 speculating on what it would be, but if a patrol
10:34:40 9 vehicle struck a person, the same procedure would
10 follow as if two -- two -- a patrol vehicle
11 collided with another vehicle.

12 Q. Okay.

13 THE REPORTER: Can you slow down for me a
14 little.

10:34:49 15 THE WITNESS: Yes. Sorry.

10:34:49 16 MS. HUGGINS: Pause after he asks the
10:34:52 17 questions too.

10:34:52 18 THE WITNESS: Okay.

10:34:52 19 MS. HUGGINS: Because at the very end you're
10:34:53 20 overlapping.

10:34:54 21 THE WITNESS: Okay.

10:34:57 22 BY MR. DAVENPORT:

10:34:58 23 Q. So after the accident investigation

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10:35:01 1 unit has been contacted, what would the accident

10:35:04 2 investigation unit, what would their steps be?

10:35:07 3 A. I'm not trained in accident

10:35:09 4 investigation, so I wouldn't be able to speculate

10:35:12 5 on what their procedures are.

10:35:13 6 Q. As a lieutenant, would you have to go

10:35:15 7 to the scene?

10:35:16 8 A. It depends on the circumstance.

10:35:18 9 Q. Okay. Let's say it's the same

10:35:20 10 circumstance, let's say a police vehicle has struck

10:35:23 11 an individual and knocked that individual over, the

10:35:26 12 accident investigation unit has been contacted. As

10:35:28 13 a lieutenant, would you have to go to the scene to

10:35:30 14 go investigate yourself?

10:35:31 15 MS. HUGGINS: Form. You may answer.

10:35:33 16 THE WITNESS: I would -- as a lieutenant, I

10:35:37 17 would go -- I go to most of my scenes as a

10:35:40 18 lieutenant.

10:35:40 19 BY MR. DAVENPORT:

10:35:40 20 Q. Okay. Now, when you say most of your

10:35:43 21 scenes as a lieutenant, what is that referring to?

10:35:45 22 A. I'm -- I'm out on the streets, I'm

10:35:47 23 active. I go to my scenes regardless of the

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10:35:52 1 severity, I'm really interactive.

10:35:54 2 Q. Okay.

10:35:55 3 A. If I can make it, depending on the
10:35:58 4 types of calls we have, if there's a lot going on.

10:36:01 5 Q. Do you try to make yourself available
10:36:05 6 at any call that an officer in C District is
10:36:09 7 dispatched to?

10:36:09 8 A. That's impossible. I'm one person.

10:36:12 9 Q. Sure. Do you try to make yourself
10:36:15 10 available to as many of those calls as possible as
10:36:20 11 a lieutenant in C District?

10:36:20 12 A. If they're requesting me, they're
10:36:23 13 asking for me to be there, yes.

10:36:24 14 Q. What types of calls would you expect
10:36:27 15 your police officers to request your presence at?

10:36:29 16 MS. HUGGINS: Form. You may answer.

10:36:31 17 THE WITNESS: That would depend on the
10:36:33 18 officer, their experience, how much time they have,
10:36:36 19 if they feel they can handle the type of scene.
10:36:39 20 But there are certain scenes that I'm required to
10:36:40 21 respond to. So I will automatically go to those
10:36:45 22 calls, but any other call that an officer feels
10:36:46 23 like they may need my assistance with I go.

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10:36:50 1 BY MR. DAVENPORT:

10:36:51 2 Q. If -- now, you talked about scenes that
10:36:55 3 you're required to go to. Are one of those types
10:36:58 4 of scenes where a police vehicle is involved with
10:37:03 5 contacting or colliding with an individual and the
10:37:08 6 accident investigation unit going to the scene to
10:37:11 7 go investigate?

10:37:11 8 MS. HUGGINS: Form. You may answer.

10:37:14 9 THE WITNESS: Can you repeat that question?

10:37:16 10 BY MR. DAVENPORT:

10:37:16 11 Q. Sure. As a lieutenant, are you
10:37:19 12 required to go to a scene involving a police
10:37:23 13 vehicle contacting an individual where accident
10:37:27 14 investigation unit has gone to go investigate the
10:37:30 15 accident?

10:37:30 16 MS. HUGGINS: Form. You may answer.

10:37:32 17 THE WITNESS: I would request, I would
10:37:34 18 determine the facts of the incident, and I would
10:37:36 19 request the accident investigation unit to respond.
10:37:39 20 And if the accident investigation unit was called
10:37:42 21 out, then I would respond as well.

10:37:44 22 BY MR. DAVENPORT:

10:37:45 23 Q. Okay. Now, as a lieutenant, are there

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10:37:48 1 any sort of procedures that you would expect
10:37:52 2 accident investigation unit to go through? For
10:37:55 3 example, pictures of the accident, statements from
10:37:58 4 witnesses, anything of that nature that you would
10:38:01 5 expect them to go through?

10:38:02 6 MS. HUGGINS: Form. You can answer.

10:38:03 7 THE WITNESS: Again, I can't speculate on
10:38:06 8 what their policy or their procedures are in their
10:38:09 9 course of how they conduct their investigations.
10:38:13 10 I'm not trained in accident investigation.

10:38:15 11 BY MR. DAVENPORT:

10:38:16 12 Q. As a lieutenant, are you obligated to
10:38:18 13 fill out any paperwork involving a accident
10:38:22 14 involving a police vehicle and an individual?

10:38:24 15 A. If there is an accident involving a
10:38:26 16 police vehicle, I am required to do the accident
10:38:28 17 report.

10:38:28 18 Q. Okay. And what sort of information do
10:38:32 19 you put on that accident report?

10:38:34 20 A. It depends on the facts of the
10:38:36 21 accident.

10:38:36 22 Q. Okay. What sort of information do they
10:38:40 23 ask you to comment on as a lieutenant within the

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10:38:42 1 accident report?

10:38:43 2 A. On an MV-104 it asks if -- there's two
10:38:49 3 sections on it, whether it's a vehicle, pedestrian,
10:38:52 4 bicycle, then just information in regards to
10:38:56 5 registration, insurance, points of impact, most
10:39:01 6 damage on the vehicle.

10:39:02 7 Then you could either circle how the
10:39:07 8 incident -- how the incident occurred or direction
10:39:10 9 of travel, then you would write a small narrative
10:39:14 10 regarding the accident.

10:39:16 11 And then there's boxes on the side that,
10:39:19 12 again, just what may have con -- contributing
10:39:22 13 factors, whether direction of travel, if there was
10:39:30 14 a subsequent event as a result of the first
10:39:33 15 accident.

10:39:34 16 Like if somebody, for instance, hit a
10:39:36 17 vehicle and then they veered off and struck a tree,
10:39:39 18 that would be the second event. And that's what I
10:39:44 19 can recall at this time that's required on that
10:39:46 20 document.

10:39:46 21 Q. Okay. Now, as part of these forms, is
10:39:52 22 there anything besides the MV-104 form that you're
10:39:56 23 required to fill out as a lieutenant?

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10:39:57 1 A. There is, and I don't recall the name
10:39:59 2 of the document at this time.

10:40:00 3 Q. That's okay. Do you remember generally
10:40:03 4 what that document asks?

10:40:05 5 A. It's the same thing, just the fact
10:40:07 6 pattern of the incident, if there's an accident.
10:40:10 7 Based on our investigation it basically would
10:40:13 8 reflect the narrative on the MV-104, what were the
10:40:19 9 contributing factors, what -- what would
10:40:21 10 have -- how the accident occurred.

10:40:22 11 Q. Now, that MV-104 form as a lieutenant,
10:40:26 12 who would you give that to?

10:40:28 13 A. That would be filed. It would go -- it
10:40:31 14 gets sent off to the state.

10:40:33 15 Q. That's the State of New York?

10:40:35 16 A. Yes.

10:40:36 17 Q. And that other form that's not the
10:40:41 18 MV-104 form, who do you file that with?

10:40:43 19 A. That goes to the department.

10:40:44 20 Q. The City of Buffalo department?

10:40:46 21 A. Correct.

10:40:47 22 Q. And how long would that document be
10:40:50 23 maintained?

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10:40:51 1 A. I don't know.

10:40:53 2 Q. After it's filed with the City of
10:40:55 3 Buffalo, are there any officers who review that
10:40:58 4 document?

10:40:58 5 A. I believe the captain does.

10:41:02 6 Q. Now, as a lieutenant, would you expect
10:41:06 7 your police officers to file any sort of paperwork
10:41:10 8 involving -- in an accident involving a police
10:41:13 9 vehicle?

10:41:13 10 MS. HUGGINS: Form. You may answer.

10:41:20 11 THE WITNESS: They would prepare an
10:41:24 12 interdepartmental memorandum giving their version
10:41:29 13 of events.

10:41:31 14 BY MR. DAVENPORT:

10:41:32 15 Q. Are there any other sorts of forms that
10:41:35 16 these officers would have to fill out?

10:41:36 17 A. If they were injured as a result, they
10:41:39 18 would fill out injured-on-duty paperwork.

10:41:42 19 Q. Any other forms?

10:41:43 20 A. Not that I can recall.

10:41:44 21 Q. Now, this interdepartmental form, what
10:41:47 22 sort of information is asked of the officers on
10:41:49 23 that?

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10:41:50 1 MS. HUGGINS: Form.

10:41:50 2 THE WITNESS: Just the facts of the event or
10:41:52 3 the incident.

10:41:54 4 BY MR. DAVENPORT:

10:41:54 5 Q. Is it a long form?

10:41:55 6 A. No, it's a blank document that they
10:41:59 7 create the contents of.

10:42:02 8 Q. Who does that interdepartmental form go
10:42:07 9 to?

10:42:08 10 A. The department, City of Buffalo, the
10:42:10 11 police department.

10:42:10 12 Q. Would you review that as a lieutenant?

10:42:13 13 A. Yes.

10:42:14 14 MS. HUGGINS: Form.

10:42:15 15 BY MR. DAVENPORT:

10:42:16 16 Q. Who else would review that form?

10:42:17 17 A. That would go through the chain of
10:42:22 18 command.

10:42:22 19 Q. So that would be the captain and then
10:42:24 20 would it go beyond the captain as well?

10:42:26 21 A. Yes.

10:42:27 22 MS. HUGGINS: Form.

10:42:27 23 BY MR. DAVENPORT:

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10:42:28 1 Q. Who -- who else besides the captain
10:42:29 2 would review it that's higher on the hierarchy?

10:42:33 3 A. I can't speculate on who -- who all
10:42:36 4 would look at it.

10:42:37 5 Q. Okay. Do you know who's supposed to
10:42:39 6 look at it?

10:42:39 7 MS. HUGGINS: Form.

10:42:40 8 THE WITNESS: I know on the document it's
10:42:43 9 from the commissioner down the chain of command we
10:42:47 10 list on the document.

10:42:50 11 BY MR. DAVENPORT:

10:42:51 12 Q. Now, after these forms have been filled
10:42:53 13 out, is there any sort of an investigation or -- or
10:42:59 14 questions asked of the police officer besides
10:43:02 15 what's written on that form?

10:43:04 16 MS. HUGGINS: Form.

10:43:05 17 THE WITNESS: That depends on the department
10:43:09 18 what they request. Once I fill out my
10:43:12 19 documentation that incident and the investigation
10:43:14 20 is no longer under my supervision, it goes through
10:43:20 21 the department chain of command.

10:43:21 22 BY MR. DAVENPORT:

10:43:22 23 Q. Okay. Do you know who would be making

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10:43:24 1 those decisions, would it be the captain?

10:43:26 2 MS. HUGGINS: Form.

10:43:26 3 THE WITNESS: I do not.

10:43:36 4 BY MR. DAVENPORT:

10:43:37 5 Q. Now, at the scene are there ever
10:43:42 6 statements taken from witnesses of the accident?

10:43:45 7 MS. HUGGINS: Form.

10:43:46 8 THE WITNESS: For just in general any
10:43:48 9 accident?

10:43:48 10 BY MR. DAVENPORT:

10:43:49 11 Q. For an accident involving a police
10:43:51 12 vehicle.

10:43:51 13 A. In any motor vehicle accident involving
10:43:54 14 any vehicle if there are witnesses available.

10:43:57 15 Q. Now, what would constitute a witness
10:44:00 16 that's available?

10:44:01 17 A. If some -- if we were out asking if
10:44:05 18 there were witnesses of if someone would come up to
10:44:05 19 us and state they had seen what happened.

10:44:11 20 Q. Who would gather those statements from
10:44:15 21 the witnesses, would it be the police officers, the
10:44:17 22 lieutenant, or would it be the accident
10:44:19 23 investigation unit?

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10:44:20 1 A. That would depend.

10:44:22 2 Q. Would you as a lieutenant take
10:44:25 3 statements from witnesses?

10:44:26 4 A. It depends.

10:44:28 5 Q. And what would that depend on?

10:44:30 6 A. If there were other officers available,
10:44:33 7 if somebody came to me, if I had time to take the
10:44:36 8 statement, or if -- who was investigating it.

10:44:38 9 Q. Okay. Would there be any other sort of
10:44:44 10 tests or statements or anything else of these
10:44:47 11 police officers or the individual who's involved in
10:44:51 12 the accident?

10:44:51 13 MS. HUGGINS: Form.

10:44:52 14 THE WITNESS: It depends.

10:44:52 15 THE REPORTER: I'm sorry. What was your
10:44:52 16 answer?

10:44:56 17 THE WITNESS: It depends.

10:44:56 18 BY MR. DAVENPORT:

10:44:56 19 Q. Okay. Would there ever be a urine
10:44:59 20 analysis of the officer involved in the accident?

10:45:02 21 MS. HUGGINS: Form.

10:45:03 22 THE WITNESS: I would not know.

10:45:04 23 BY MR. DAVENPORT:

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10:45:05 1 Q. Okay. That's not anywhere in the
10:45:08 2 policies or procedures?

10:45:09 3 A. Not that I can recall.

10:45:11 4 Q. Okay. In a regular motor vehicle
10:45:13 5 accident would there ever be a urine analysis of
10:45:19 6 any of the individuals involved in that motor
10:45:21 7 vehicle accident?

10:45:21 8 MS. HUGGINS: Form.

10:45:22 9 THE WITNESS: It would depend on the
10:45:25 10 situation. And, again, I'm not an accident
10:45:28 11 investigator, so I would not know.

10:45:30 12 BY MR. DAVENPORT:

10:45:30 13 Q. Sure. In your experience as a police
10:45:35 14 officer, did you ever witness any accidents not
10:45:38 15 involving police vehicles?

10:45:39 16 A. Yes.

10:45:41 17 Q. Was there ever a time where a urine
10:45:45 18 analysis was conducted of any of the drivers?

10:45:48 19 A. Excuse me. As a -- I've witnessed
10:45:51 20 accidents as a civilian. I've never witnessed an
10:45:54 21 accident -- actually, I was in one accident as a
10:45:56 22 passenger, but I didn't -- are you asking as a
10:46:00 23 patrol officer if I've witnessed an accident or as

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10:46:03 1 a civilian if I've witnessed an accident?

10:46:04 2 Q. Well, my question was more so as a
10:46:07 3 patrol officer, so you can answer that first.

10:46:09 4 A. Okay.

10:46:09 5 MS. HUGGINS: As a patrol officer, has she
10:46:12 6 witnessed an accident?

10:46:13 7 BY MR. DAVENPORT:

10:46:13 8 Q. Correct.

10:46:14 9 A. Yes.

10:46:15 10 Q. Okay. Were you present for the
10:46:17 11 investigation of that accident?

10:46:17 12 A. Partial.

10:46:19 13 Q. At any point did it seem like either of
10:46:23 14 the drivers may be intoxicated?

10:46:25 15 A. No.

10:46:26 16 MS. HUGGINS: Form.

10:46:26 17 BY MR. DAVENPORT:

10:46:27 18 Q. Okay. As a civilian have you ever
10:46:29 19 witnessed a car accident?

10:46:31 20 A. Yes.

10:46:31 21 Q. Have you been involved in a car
10:46:34 22 accident?

10:46:34 23 A. Yes. Excuse me. As a civilian or as a

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10:46:39 1 patrol officer?

10:46:40 2 Q. As a civilian.

10:46:41 3 A. Yes.

10:46:41 4 Q. Were you a driver or a passenger as a
10:46:44 5 civilian?

10:46:44 6 A. Driver.

10:46:45 7 Q. Driver. Did it appear that the other
10:46:47 8 driver or you were intoxicated at the time?

10:46:49 9 MS. HUGGINS: Form.

10:46:49 10 THE WITNESS: No.

10:46:50 11 BY MR. DAVENPORT:

10:46:52 12 Q. Okay. Have you ever witnessed an
10:46:53 13 accident involving somebody who may have been
10:46:56 14 intoxicated at the time?

10:46:58 15 A. Excuse me. Could you repeat that.

10:47:00 16 Q. Have you ever witnessed either as a
10:47:02 17 patrol officer or as a civilian an accident where
10:47:05 18 either of the drivers may have been intoxicated at
10:47:08 19 the time?

10:47:08 20 MS. HUGGINS: Form. You may answer.

10:47:09 21 THE WITNESS: I've never witnessed an
10:47:12 22 accident like that.

10:47:13 23 MR. DAVENPORT: Okay. So I'm going to have

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10:47:21 1 this marked as I believe Exhibit 24. Okay.

10:47:21 2 The following was marked for Identification:

3 EXH. 24 Buffalo Police Academy
4 Training Record

10:48:03 5 BY MR. DAVENPORT:

10:48:04 6 Q. So I'm going to show you, Ms. Velez,
10:48:06 7 what's been marked as Exhibit 24. Do you recognize
10:48:08 8 that document?

10:48:09 9 A. Yes.

10:48:09 10 Q. And what do you recognize that to be?

10:48:13 11 A. The Buffalo Police Academy Training
10:48:16 12 Record.

10:48:16 13 Q. And whose training record is it?

10:48:20 14 A. It says it is Jenny M. Velez.

10:48:24 15 Q. Okay. Now, reviewing this document
10:48:26 16 does it seem that each of your training courses are
10:48:30 17 listed on this document?

10:48:31 18 MS. HUGGINS: Form. You can answer.

10:48:46 19 THE WITNESS: Yes.

10:48:46 20 BY MR. DAVENPORT:

10:48:46 21 Q. Are there any inaccuracies when going
10:48:49 22 through this document that you would like to point
10:48:51 23 out at this time?

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10:48:55 1 A. No.

10:48:57 2 Q. So my first question is going to be if
10:49:01 3 you could turn to the third page, please. At the
10:49:04 4 very bottom it says CIT crisis services. And that
10:49:08 5 would have been date from 3/4/2019, date two,
10:49:14 6 3/7/2019; do you see where that is?

10:49:15 7 A. Yes.

10:49:15 8 Q. Okay. What is that training referring
10:49:17 9 to?

10:49:17 10 A. Crisis intervention training.

10:49:19 11 Q. And what is crisis intervention
10:49:22 12 training?

10:49:22 13 A. It is where we learn how to deal with
10:49:26 14 people who may be having mental health issues, are
10:49:29 15 in a crisis.

10:49:29 16 Q. Now, I see that you had 32 hours of
10:49:33 17 training on that; is that correct?

10:49:34 18 A. Yes.

10:49:35 19 Q. And this training would have been after
10:49:38 20 you had been promoted to lieutenant of C District?

10:49:41 21 A. Yes.

10:49:41 22 Q. Okay. Were police officers required to
10:49:44 23 go through 32 hours of training?

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10:49:47 1 A. No.

10:49:48 2 Q. Was it just lieutenants who were
10:49:50 3 required to go through 32 hours of training?

10:49:52 4 A. At the time -- currently Buffalo police
10:49:55 5 officers do get CIT training, it's not 32 hours.

10:49:59 6 This is training that's offered. It's
10:50:01 7 on -- currently it's voluntary. We sign up for it
10:50:07 8 if it coincides with our schedule.

10:50:10 9 Q. Okay.

10:50:10 10 A. For the -- the extended training.

10:50:12 11 Q. Okay. What would the normal training
10:50:14 12 be if you didn't sign up for the extended training?

10:50:18 13 A. I don't recall the exact number of
10:50:20 14 hours --

10:50:20 15 Q. Okay.

10:50:20 16 A. -- that the department offers.

10:50:21 17 Q. Was there any reason why you signed up
10:50:24 18 for the extended training?

10:50:25 19 A. I wanted to know more about the topic.

10:50:28 20 Q. Okay. Were there any events that
10:50:31 21 happened that led you to want that extra knowledge?

10:50:34 22 A. Nothing specific.

10:50:35 23 Q. Okay. Do you know if Lieutenant McHugh

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10:50:40 1 also went through 32 hours of training?

10:50:42 2 A. I don't know.

10:50:43 3 Q. Okay. Do you know if any police
10:50:45 4 officers went through the 32 hours of training?

10:50:47 5 A. There were other police officers with
10:50:49 6 me in the training. I don't know all of in the
10:50:53 7 Buffalo Police Department who's taken the training.

10:50:55 8 Q. Okay. Were those police officers or
10:50:58 9 were they lieutenants?

10:50:59 10 A. Both.

10:51:00 11 Q. Okay. Now, I also see that, turning to
10:51:08 12 the first page, towards the bottom you participated
10:51:10 13 in what is called Tahoe training. And that would
10:51:14 14 have been on April 10th of 2014; do you see where
10:51:17 15 that is?

10:51:17 16 A. Yes.

10:51:18 17 Q. Okay. What sort of training was that?

10:51:24 18 A. We had gotten new Tahoes added to the
10:51:29 19 fleet, so we had to drive them and pass a course.

10:51:32 20 Q. Okay. What sort of training did
10:51:37 21 they -- strike that.

10:51:37 22 Going through that training, was there any
10:51:43 23 sort of test that you had to complete in order to

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10:51:46 1 pass that training?

10:51:47 2 A. We had to complete the driving course.

10:51:50 3 Q. Okay. And what was the driving course,
10:51:53 4 what was -- what did that consist of?

10:51:55 5 A. It was strategically placed cones we
10:51:59 6 had to maneuver the vehicle through. I -- I don't
10:52:01 7 remember the exact pattern.

10:52:02 8 Q. Okay. Were you driving for the
10:52:05 9 entirety of the four hours?

10:52:06 10 A. No.

10:52:06 11 Q. Okay. Approximately how long were you
10:52:10 12 driving during that course?

10:52:11 13 A. I don't recall, because we had a
10:52:14 14 certain number of Tahoes, so we'd have to get out
10:52:18 15 and somebody else would have to drive. And we'd
10:52:21 16 have to take turns, from what I can recall.

10:52:24 17 Q. Sure. At any point that you weren't
10:52:26 18 driving what were you doing during this training?

10:52:28 19 A. This was outdoor training, so I believe
10:52:30 20 I was waiting.

10:52:30 21 Q. Okay.

10:52:32 22 A. And observing.

10:52:32 23 Q. Was there any sort of instruction that

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10:52:36 1 was being provided to you at that time?

10:52:39 2 A. I don't recall.

10:52:39 3 Q. Okay. Were there training instructors
10:52:41 4 that were present with you while you were waiting?

10:52:41 5 A. Yes.

10:52:42 6 Q. Okay. Approximately how many people
10:52:45 7 were in that class with you?

10:52:47 8 A. I don't recall.

10:52:48 9 Q. Okay. Was it more than 20?

10:52:51 10 A. I don't recall.

10:52:53 11 Q. Was it more than 50?

10:52:57 12 A. No.

10:52:57 13 Q. Okay. The amount of driving that you
10:53:03 14 were doing, was it more than a half an hour?

10:53:06 15 A. I don't recall.

10:53:07 16 Q. Okay. Now, besides the driving, did
10:53:12 17 they give you any sort of instruction on any of the
10:53:16 18 electronics within the vehicle?

10:53:17 19 A. Yes.

10:53:18 20 Q. What sorts of electronics did they give
10:53:20 21 you training on?

10:53:21 22 A. The -- how to operate the lights and
10:53:24 23 sirens, where the buttons were.

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10:53:26 1 Q. Okay. Was there a computer that was in
10:53:29 2 that Tahoe?

10:53:31 3 A. I don't recall.

10:53:33 4 Q. Okay. Besides operating the lights and
10:53:36 5 sirens, was there any sort of electronic
10:53:38 6 instruction that you were given?

10:53:40 7 A. Not that I can recall.

10:53:41 8 Q. Okay. January 18th of 2013 is the
10:53:52 9 first course that's listed; do you see that?

10:53:56 10 MS. HUGGINS: Form.

10:53:57 11 BY MR. DAVENPORT:

10:53:57 12 Q. For rules and regulations on the first
10:54:00 13 page?

10:54:00 14 A. January 18th?

10:54:02 15 Q. Yes, of 2013.

10:54:04 16 A. Yes.

10:54:05 17 Q. Okay. Was this approximately the date
10:54:08 18 that you started with the Buffalo Police Academy?

10:54:11 19 A. Yes.

10:54:12 20 Q. Okay. And prior to this, what -- where
10:54:15 21 did you receive your training?

10:54:19 22 A. This would have been when we started
10:54:22 23 the academy, so I had no training prior to

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10:54:26 1 January 1 of 2013.

10:54:29 2 Q. Okay. Did you receive any training
10:54:32 3 from any entity that wasn't the Buffalo Police
10:54:37 4 Academy before this? Did you receive -- I'm
10:54:39 5 sorry -- strike that.

10:54:40 6 Did you receive any training through the
10:54:42 7 County before the Buffalo Police Academy?

10:54:44 8 A. Yes.

10:54:45 9 Q. Would that have been before
10:54:48 10 January 18th of 2013?

10:54:50 11 A. Yes.

10:54:50 12 Q. Okay. Approximately how long did that
10:54:52 13 training last for?

10:54:53 14 A. That I had with the -- with Erie
10:54:57 15 County?

10:54:57 16 Q. With Erie County, yes.

10:54:59 17 A. That was from my previous employer with
10:55:02 18 Erie County, because --

10:55:03 19 MS. HUGGINS: I think there's just confusion
10:55:05 20 with the term academy.

10:55:06 21 BY MR. DAVENPORT:

10:55:07 22 Q. Okay. Now, when you say your previous
10:55:11 23 employer, who was your previous employer before the

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10:55:15 1 Buffalo Police Department?

10:55:16 2 A. Erie County Sheriff's office.

10:55:16 3 Q. Okay. Did you work as an Erie County
10:55:16 4 Sheriff?

10:55:16 5 A. I was a deputy --

10:55:16 6 Q. Okay.

10:55:19 7 A. -- in their jail management division.

10:55:21 8 Q. Okay. And how long did you do that
10:55:23 9 for?

10:55:24 10 A. Approximately three years.

10:55:25 11 Q. Okay. So I'm sorry that I didn't ask
10:55:29 12 you this before. When did you start your graduate
10:55:35 13 program?

10:55:39 14 A. I graduated with my bachelor's in 2007.
10:55:47 15 I can't recall if I immediately started or if I had
10:55:49 16 taken a break. Possibly at the end of 2007.

10:55:53 17 Q. Okay. After finishing with your
10:55:59 18 graduate program, and I understand that you didn't
10:56:01 19 necessarily finish it, but after completing the
10:56:05 20 amount of course work that you did, did you start
10:56:08 21 with Erie County the deputy -- as a deputy
10:56:10 22 immediately after?

10:56:12 23 A. It was within that time frame from when

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10:56:20 1 I -- I started with the County in April or July of
10:56:26 2 2010. So I don't recall if there was an overlap or
10:56:31 3 if I had stopped and then started, because of the
10:56:34 4 schedule. I don't recall.

10:56:34 5 Q. Okay.

10:56:35 6 A. Exactly.

10:56:36 7 Q. Okay. Do you remember any other
10:56:38 8 positions that you would have had in between your
10:56:41 9 graduate program and starting with the County?

10:56:44 10 A. I did work with the Buffalo Board of
10:56:47 11 Education as a security officer in the schools.

10:56:49 12 Q. Okay. Did you require any sort of
10:56:51 13 training as a security officer for the Board of
10:56:54 14 Education?

10:56:54 15 A. Well, I'm a -- I was a certified
10:56:57 16 security guard, so I had taken that certification.

10:57:00 17 Q. Okay. Who was that certification
10:57:03 18 through?

10:57:06 19 A. I don't remember the name of the
10:57:08 20 company that I did the training with.

10:57:10 21 Q. Okay. Who was your employer at the
10:57:14 22 time?

10:57:14 23 A. The Buffalo Board of Education.

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10:57:16 1 Q. Did you work for -- did you work
10:57:22 2 for -- and, I'm sorry, was the Board of Education,
10:57:25 3 was it City run or was it run by the County?

10:57:28 4 A. That's the Board of Education. It's in
10:57:31 5 City Hall, but it's the Board of Education and the
10:57:33 6 City of Buffalo is separate.

10:57:34 7 Q. Okay.

10:57:35 8 A. It's the City -- City of Buffalo School
10:57:37 9 District.

10:57:37 10 Q. Okay. Okay. So was your employer
10:57:40 11 the -- the City of Buffalo then, the municipality
10:57:44 12 of the City of Buffalo?

10:57:45 13 A. It's the City of Buffalo, but it's the
10:57:48 14 Board of -- Buffalo Board of Education.

10:57:49 15 Q. Sure. Were you hired by a private
10:57:54 16 security firm at the time or were you hired through
10:57:57 17 the City of Buffalo?

10:57:59 18 A. I was --

10:57:59 19 MS. HUGGINS: Form. You can answer.

10:58:00 20 THE WITNESS: I was hired through the Board
10:58:03 21 of Education.

10:58:03 22 BY MR. DAVENPORT:

10:58:03 23 Q. Okay. And that would have

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10:58:06 1 been -- there wouldn't have been a private security
10:58:09 2 firm that they would have hired for their security,
10:58:12 3 correct?

10:58:12 4 A. Correct.

10:58:13 5 Q. Okay. Now, when you started with Erie
10:58:19 6 County as a deputy, did you have to go through any
10:58:22 7 training before you started that position?

10:58:24 8 A. Yes.

10:58:24 9 Q. How long did that training last for?

10:58:26 10 A. That training I believe was 12 weeks.

10:58:29 11 Q. Okay. Was there multiple phases to the
10:58:36 12 training or was it just 12 weeks that was the one
10:58:40 13 phase?

10:58:42 14 A. There was also a -- a field training as
10:58:46 15 well, so there was the -- their academy and then
10:58:49 16 same thing like with the Buffalo Police, then you
10:58:53 17 go into field training where you sit with
10:58:55 18 experienced deputies and learn how to do the job
10:58:59 19 essentially.

10:58:59 20 Q. Okay. How long did that field training
10:59:03 21 last for?

10:59:03 22 A. I don't recall the exact amount of
10:59:06 23 time.

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10:59:06 1 Q. Okay. Was it more or less than

10:59:09 2 16 weeks?

10:59:09 3 A. I don't recall.

10:59:10 4 Q. Okay. Do you remember who you did your
10:59:15 5 field training with?

10:59:16 6 A. That -- for the sheriff's office it's
10:59:19 7 not one set officer, it's multiple different
10:59:22 8 officers.

10:59:23 9 Q. Okay. Okay.

10:59:24 10 A. Deputies, excuse me, multiple different
10:59:27 11 deputies.

10:59:27 12 Q. Okay. Now, as a deputy, what were your
10:59:32 13 primary responsibilities at that time for the
10:59:33 14 County?

10:59:34 15 A. Care, custody, and control of the
10:59:36 16 inmates.

10:59:38 17 Q. What jailhouse did you work at?

10:59:41 18 A. I worked at both the Erie County
10:59:44 19 Holding Center and we had an annex at the Erie
10:59:49 20 County Correctional facility in Alden.

10:59:51 21 Q. Okay. Where is the Erie County Holding
10:59:54 22 Center located?

10:59:54 23 A. I believe it's 40 Delaware.

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10:59:56 1 Q. And was that the same location when you
11:00:00 2 were working there?

11:00:00 3 A. Yes.

11:00:01 4 Q. Okay. When you started with the
11:00:05 5 County, did you believe that you would eventually
11:00:12 6 become a police officer with the City of Buffalo at
11:00:15 7 that time?

11:00:15 8 A. I had aspirations to be a police
11:00:18 9 officer.

11:00:18 10 Q. Did you want to work with the City of
11:00:21 11 Buffalo specifically as a police officer?

11:00:23 12 A. Yes.

11:00:24 13 Q. Okay. Were there any other
11:00:27 14 municipalities that you considered at that time?

11:00:29 15 A. No.

11:00:29 16 Q. What was your reason for wanting to
11:00:31 17 work for the City of Buffalo?

11:00:32 18 A. This is what -- this is my home.

11:00:34 19 Q. Okay. So you've always lived in the
11:00:36 20 City then?

11:00:37 21 A. Yes.

11:00:37 22 Q. Okay. Let's see. Now, I see -- if you
11:00:48 23 can turn to your second page on your training

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11:00:53 1 towards the bottom there is law enforcement and
11:00:57 2 mental health. And that would have been completed
11:01:00 3 on August 4th of 2016; do you see where that's
11:01:04 4 located?

11:01:04 5 A. Yes.

11:01:05 6 Q. And that would have been for three
11:01:07 7 hours, correct?

11:01:07 8 A. Yes.

11:01:08 9 Q. Is there a difference between this
11:01:11 10 course, law enforcement and mental health, and the
11:01:13 11 course you took in 2019 CIT crisis services?

11:01:18 12 A. The amount hours is significantly
11:01:21 13 different. It's much more content in the CIT
11:01:26 14 course.

11:01:26 15 Q. Okay. Do some of the content from the
11:01:31 16 law enforcement and mental health overlap with what
11:01:34 17 you are taught in the CIT crisis services?

11:01:37 18 A. I don't recall the specifics.

11:01:38 19 Q. Okay. Is there anything that's covered
11:01:42 20 in the law enforcement and mental health that's not
11:01:46 21 covered in the CIT crisis services course?

11:01:48 22 A. I don't recall the specifics.

11:01:49 23 Q. Okay. Do you remember or recall

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11:01:53 1 anything that was specifically gone over with the
11:01:56 2 law enforcement and mental health training course?

11:01:58 3 A. Not at this time.

11:01:59 4 Q. Do you know if there was an option to
11:02:02 5 take more hours than the three that's listed on
11:02:07 6 your training course?

11:02:07 7 A. I don't recall.

11:02:10 8 Q. Now, there was a voluntary option to
11:02:14 9 take more CIT crisis services training in 2019. Do
11:02:21 10 you know why there was that option to take more
11:02:24 11 hours of mental health training?

11:02:26 12 MS. HUGGINS: Form. You may answer.

11:02:30 13 THE WITNESS: The Buffalo Police had
11:02:37 14 started a -- we have a new coordinator, we have a
11:02:43 15 new mental health coordinator, Captain Amber Buyer,
11:02:44 16 and she -- I'm trying to think of the correct for
11:02:52 17 how to articulate how she -- she offered these
11:02:56 18 courses.

11:02:57 19 She put it out on a training bulletin
11:03:00 20 through this new initiative the Buffalo Police had
11:03:04 21 engaged in and she had put that training out.

11:03:07 22 BY MR. DAVENPORT:

11:03:07 23 Q. Okay. Do you know approximately when

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11:03:11 1 Amber Buyer began with the City of Buffalo?

11:03:14 2 A. I don't.

11:03:15 3 Q. Okay. Do you know approximately when
11:03:17 4 this new initiative was commenced by the City of
11:03:22 5 Buffalo?

11:03:22 6 A. I can't recall.

11:03:24 7 Q. Do you know if it was before or after
11:03:28 8 August 4th of 2016 when you took this law
11:03:30 9 enforcement and mental health training course?

11:03:32 10 A. I don't know.

11:03:33 11 Q. Okay. Do you have any reason to
11:03:34 12 believe that it would have been before that date?

11:03:36 13 MS. HUGGINS: Form. You can answer.

11:03:37 14 THE WITNESS: I don't recall it being
11:03:41 15 offered before that date.

11:03:42 16 BY MR. DAVENPORT:

11:03:43 17 Q. Okay. Have you ever met with Amber
11:03:46 18 Buyer?

11:03:46 19 MS. HUGGINS: Form.

11:03:47 20 THE WITNESS: Could you clarify?

11:03:49 21 BY MR. DAVENPORT:

11:03:49 22 Q. Personally or professionally have you
11:03:52 23 ever met with Amber Buyer before?

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11:03:54 1 A. She -- I've crossed paths with her in
11:03:58 2 work.

11:03:58 3 Q. Okay.

11:03:58 4 A. Yes.

11:03:59 5 Q. Do you speak with her often?

11:04:01 6 A. Currently regarding with this new
11:04:04 7 crisis intervention training we have if we come
11:04:08 8 across any individuals who we believe may need
11:04:12 9 further assistance or we may need some referrals I
11:04:17 10 will defer to her and see if she has any
11:04:22 11 recommendations.

11:04:22 12 Q. Approximately how often do you go to
11:04:26 13 her with individuals who may need some sort of
11:04:27 14 crisis intervention training?

11:04:27 15 MS. HUGGINS: Form. You can answer.

11:04:30 16 THE WITNESS: I -- that I can recall
11:04:36 17 I -- maybe five to 10 times.

11:04:39 18 BY MR. DAVENPORT:

11:04:39 19 Q. Okay. And that would have been since
11:04:41 20 you started as a lieutenant?

11:04:43 21 A. Since I've had this training, the CIT
11:04:48 22 training.

11:04:48 23 Q. Okay. Okay. So that would have been

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11:04:50 1 after March 7th of 2019?

11:04:53 2 A. Correct.

11:04:54 3 Q. Now, prior to Amber Buyer beginning

11:04:58 4 with her position, was there anybody that

11:05:02 5 lieutenants or police officers could go to to speak

11:05:04 6 about, you know, what should be done about somebody

11:05:06 7 who may exhibit mental health issues?

11:05:09 8 MS. HUGGINS: Form.

11:05:12 9 THE WITNESS: We did have crisis services

11:05:16 10 that we could use as an outlet, we can always call

11:05:20 11 them, but in regards to having somebody in the

11:05:23 12 department that we can go to, I -- I didn't know of

11:05:27 13 anyone.

11:05:27 14 BY MR. DAVENPORT:

11:05:28 15 Q. Okay. Have you ever gone to Amber

11:05:38 16 Buyer after submitting a 941 form for an

11:05:44 17 individual?

11:05:45 18 MS. HUGGINS: Form. You can answer.

11:05:49 19 THE WITNESS: Can you --

11:05:51 20 BY MR. DAVENPORT:

11:05:52 21 Q. Sure.

11:05:52 22 A. -- clarify.

11:05:53 23 Q. So as an officer occasionally you fill

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11:05:57 1 out a 941 form, correct?

11:05:59 2 A. Correct.

11:06:00 3 Q. And what is a 941 form?

11:06:02 4 A. It's a mental health request to have
11:06:05 5 someone evaluated.

11:06:05 6 Q. Have you ever gone to Amber Buyer after
11:06:09 7 filling out a 941 form requesting some sort of an
11:06:15 8 evaluation of an individual?

11:06:16 9 A. I have not, no.

11:06:17 10 Q. Okay. Now, these -- these other prior
11:06:22 11 times that you've gone to go speak with Amber Buyer
11:06:26 12 about individuals that you're concerned with, did
11:06:30 13 you at any time fill out a 941 form for those
11:06:34 14 individuals?

11:06:34 15 A. No.

11:06:35 16 Q. Did any officers fill out 941 forms for
11:06:38 17 those individuals?

11:06:39 18 A. I'm not certain.

11:06:40 19 Q. Okay. What led you to be concerned
11:06:44 20 about the mental health of these individuals that
11:06:47 21 you spoke with Amber Buyer about?

11:06:49 22 MS. HUGGINS: Form. Just it's very broad,
11:06:56 23 so I'm not going to prevent you from asking the

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11:07:00 1 question, but as it's phrased now I think it's
11:07:02 2 confusing and may encompass a lot of things.

11:07:05 3 BY MR. DAVENPORT:

11:07:06 4 Q. Do you understand my question?

11:07:06 5 A. Well, I don't know if I would want to
11:07:10 6 discuss specific mental health issues of people
11:07:13 7 that we have dealings with.

11:07:14 8 Q. Okay. Would these individuals be
11:07:18 9 people that you ran into in C District?

11:07:20 10 A. Yes.

11:07:21 11 Q. So I'm not asking you to disclose any
11:07:25 12 names, so I will never be able to locate these
11:07:28 13 individuals, but I'm just asking what sorts of
11:07:30 14 mental health concerns did you have for those
11:07:33 15 individuals?

11:07:33 16 MS. HUGGINS: Same form objection. I am
11:07:36 17 concerned about HIPAA, depending on her answer.
11:07:39 18 And the way the question is worded it may still
11:07:42 19 implicate that.

11:07:43 20 MR. DAVENPORT: I don't think that it does.
11:07:45 21 I mean, I'm just asking very broadly about
11:07:49 22 individuals within the City of Buffalo, what sorts
11:07:51 23 of mental health issues they would have had with

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11:07:54 1 those people.

11:07:55 2 MS. HUGGINS: What I -- as a compromise, I
11:07:58 3 would allow you to ask sort of factors taken into
11:08:01 4 account or looked at in terms of her evaluation,
11:08:05 5 but not any -- anything about someone specific or
11:08:08 6 their own treatment.

11:08:09 7 BY MR. DAVENPORT:

11:08:10 8 Q. Yeah, sure. I didn't ask that
11:08:12 9 questions. Just what sorts of things were you
11:08:14 10 concerned with with those individuals?

11:08:15 11 A. Okay. We have -- like I said, I've
11:08:17 12 been in C District for the entirety of my career.
11:08:20 13 We have people who we're very familiar with and
11:08:22 14 that we know that they may have a diagnosis or they
11:08:26 15 require a specific treatment.

11:08:28 16 If I see someone who is displaying some
11:08:30 17 indicators, whether it be verbal, behavioral, or
11:08:32 18 appearance and they're not a current threat to
11:08:35 19 themselves or anyone else, but I feel that they may
11:08:39 20 need some reevaluation and I know who they are, I
11:08:43 21 can call and request some type of assistance for
11:08:47 22 that person or a referral, give their name as a
11:08:49 23 referral for further evaluation, because I know

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11:08:51 1 that they're involved in some type of services
11:08:54 2 already.

11:08:54 3 BY MR. DAVENPORT:

11:08:54 4 Q. Okay. And what sorts of verbal and
11:08:57 5 behavior things by these individuals would lead you
11:09:00 6 to be concerned for their well-being?

11:09:02 7 A. For instance, it could be cold outside
11:09:05 8 and they're not dressed appropriately for the
11:09:08 9 weather. Or it could be very cold outside and they
11:09:11 10 don't have the amount of clothes on that you would
11:09:15 11 think that somebody should have in subfreezing
11:09:18 12 temperatures. Or their hygiene.

11:09:24 13 Q. So besides hygiene and not being
11:09:29 14 dressed appropriately, what sorts of verbal cues
11:09:33 15 would be given by these individuals that would lead
11:09:36 16 you to be concerned for their mental health?

11:09:38 17 A. There's a number of different
11:09:40 18 indicators and there -- there could be more than
11:09:42 19 one. There could be a multitude of different
11:09:45 20 factors that would cause me to want -- want to have
11:09:48 21 them evaluated or receive more assistance or have a
11:09:52 22 referral or have a team come out that I know may
11:09:56 23 have already -- like I said, the individual may

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11:09:58 1 already have services in place that we're aware of
11:10:02 2 and we know the team that they're working with and
11:10:02 3 say they're back out on this corner again.

11:10:06 4 They may be yelling loudly, they may be
11:10:06 5 having a fixated repetitive speech. It could be
11:10:09 6 something that we -- we see them often and it's not
11:10:11 7 what we would consider a baseline behavior.

11:10:14 8 Q. Okay. Now, besides people that you
11:10:17 9 encounter often are there ever any instances where
11:10:21 10 you run -- run into somebody that you've never seen
11:10:24 11 before and they give you some sort of verbal cues
11:10:28 12 that would lead you to be concerned for their
11:10:30 13 mental health?

11:10:31 14 A. Yes.

11:10:32 15 Q. What sorts of verbal cues would they
11:10:36 16 give if you have never ran -- come across this
11:10:38 17 person before?

11:10:39 18 A. That --

11:10:39 19 MS. HUGGINS: Form. You can answer.

11:10:40 20 THE WITNESS: That depends, somebody
11:10:42 21 could -- there's a million different scenarios I
11:10:46 22 could think of off the top of my head, but one of
11:10:48 23 the more severe someone could yell I want to kill

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11:10:48 1 myself.

11:10:49 2 BY MR. DAVENPORT:

11:10:50 3 Q. Okay. Now, besides yelling something
11:10:53 4 about self-harm or just speaking about self-harm,
11:10:58 5 would you ever have mental health concerns if an
11:11:02 6 individual was speaking about hurting another
11:11:05 7 individual?

11:11:05 8 A. Can you repeat that?

11:11:06 9 Q. Sure. Aside from instances of
11:11:09 10 self-harm, are there any times where you'd be
11:11:12 11 concerned about an individual's self-help -- or
11:11:16 12 mental health if they were talking about injuring
11:11:19 13 another individual, not themselves?

11:11:21 14 A. Yes.

11:11:22 15 Q. Okay. And when would that cross from
11:11:24 16 being a potential crime to one of a mental health
11:11:29 17 concern?

11:11:29 18 MS. HUGGINS: Form. You may answer.

11:11:30 19 THE WITNESS: Could you repeat that?

11:11:32 20 BY MR. DAVENPORT:

11:11:32 21 Q. Sure. When would a threat of physical
11:11:36 22 violence upon somebody else be a cross from a crime
11:11:39 23 to a concern for mental health?

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11:11:42 1 A. That would depend.

11:11:43 2 Q. Okay. And this would be on isolated
11:11:47 3 incidents where you've never come across that
11:11:50 4 person before?

11:11:50 5 A. Either/or.

11:11:51 6 Q. Okay. Have you ever been concerned
11:11:54 7 about an individual's mental health based on what
11:11:58 8 they said to police officers?

11:12:00 9 MS. HUGGINS: Form. You can answer.

11:12:01 10 THE WITNESS: Could you repeat that?

11:12:02 11 BY MR. DAVENPORT:

11:12:03 12 Q. Have you ever been concerned about an
11:12:07 13 individual's mental health based solely on what
11:12:09 14 they said to police officers?

11:12:10 15 A. It depends on what they said.

11:12:11 16 Q. Sure. I guess my question isn't
11:12:14 17 necessarily what they said, my question is just
11:12:16 18 more so have you ever been concerned about
11:12:18 19 somebody's mental health based on something that
11:12:21 20 they said to police officers?

11:12:22 21 MS. HUGGINS: Form. You can answer.

11:12:23 22 THE WITNESS: Again, it depends on
11:12:26 23 what -- what was said, how it was said to police

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11:12:29 1 officers, like --

11:12:30 2 BY MR. DAVENPORT:

11:12:30 3 Q. I -- I understand that, you know, what
11:12:32 4 this individual may have said could be different.
11:12:35 5 I'm more so just asking have you ever been
11:12:38 6 concerned, and this is more so, you know, a
11:12:42 7 numerical answer, so have you ever been concerned
11:12:45 8 with somebody's mental health based on something
11:12:48 9 that they said to police officers?

11:12:50 10 MS. HUGGINS: Form.

11:12:55 11 THE WITNESS: Could you -- you said based on
11:12:57 12 something numerical, can you --

11:13:00 13 BY MR. DAVENPORT:

11:13:00 14 Q. Sure. So instead of saying what these
11:13:03 15 individuals said, I more so want to know if you
11:13:07 16 have ever been concerned about somebody's mental
11:13:09 17 health and sought out crisis intervention for that
11:13:13 18 individual based solely on statements that they
11:13:16 19 made to police officers in any sort of capacity,
11:13:22 20 what -- what they said to you specifically?

11:13:23 21 A. Yes.

11:13:24 22 Q. Okay.

11:13:25 23 MS. HUGGINS: Form as to the last question.

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11:13:27 1 BY MR. DAVENPORT:

11:13:29 2 Q. So what -- what sort of things have led
11:13:33 3 you to be concerned, what sorts of things did that
11:13:36 4 individual say that led you to be concerned about
11:13:38 5 that individual's mental health based on what they
11:13:42 6 said to you?

11:13:42 7 MS. HUGGINS: Form. You may answer.

11:13:43 8 THE WITNESS: It -- there's been numerous
11:13:49 9 instances, whether they're articulating a homicidal
11:13:54 10 or suicidal ideation.

11:13:57 11 BY MR. DAVENPORT:

11:13:57 12 Q. Any others that you recall?

11:13:58 13 A. Yes, if they're fixated. Like there's
11:14:03 14 different indicators you can listen to in
11:14:07 15 somebody's speech or how they're saying something
11:14:09 16 to you repetitively, whether they are expressing
11:14:15 17 some type of hallucination or delusion.

11:14:19 18 Q. Okay. Now, you've used fixated and
11:14:24 19 repetitive language, would those essentially mean
11:14:29 20 the same thing? If somebody is fixated, is that
11:14:32 21 because they keep on repeating the same thing over
11:14:36 22 and over?

11:14:36 23 A. Not necessarily.

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11:14:37 1 Q. Okay. So how would you use those terms
11:14:41 2 fixated and repetitive?

11:14:44 3 MS. HUGGINS: Form. Let's just break it
11:14:46 4 into two questions.

11:14:47 5 BY MR. DAVENPORT:

11:14:47 6 Q. Okay. How would you use the term
11:14:47 7 fixated?

11:14:47 8 A. Fixated could be on an idea or a -- a
11:14:52 9 topic. They can be artic -- they can be fixated on
11:14:57 10 it in having -- without saying the same thing over
11:15:01 11 and over and over again.

11:15:01 12 Q. Okay.

11:15:03 13 A. It's the same type of topic, but not
11:15:06 14 repetitive in what is being said.

11:15:09 15 Q. Okay. Now, on January 1st of 2017 did
11:15:16 16 you notice any of these verbal indicators of mental
11:15:20 17 health issues with Mr. Kistner?

11:15:22 18 A. Can you repeat that? I'm sorry.

11:15:24 19 Q. On January 1st of 2017 did you witness
11:15:27 20 any of these verbal cues for mental health issues
11:15:31 21 with Mr. Kistner?

11:15:32 22 A. Yes.

11:15:32 23 Q. And which of these verbal cues did you

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11:15:36 1 recognize at that time?

11:15:37 2 A. That I can recall, it was fixation and
11:15:39 3 repetitive.

11:15:40 4 Q. Any others?

11:15:43 5 A. If I could see the 941 documentation.

11:15:47 6 Q. Sure. Before I show you that document,
11:15:50 7 did you review any documents for your deposition
11:15:53 8 testimony today?

11:15:54 9 A. I did.

11:15:54 10 Q. Okay. And what documents did you
11:15:56 11 review?

11:15:59 12 A. I did review the 941 paperwork, the
11:16:04 13 arrest forms.

11:16:11 14 Q. Now, when you say arrest forms, what
11:16:14 15 would those include?

11:16:17 16 A. There was a number of different forms,
11:16:22 17 it was the 1375, it was the 1 -- P163.

11:16:27 18 Q. Now, what's a P163?

11:16:31 19 A. The arrest form. The 1375 is a crime
11:16:36 20 report.

11:16:38 21 Q. Okay. Did you review any other
11:16:43 22 documents?

11:16:43 23 A. Yes, I just don't recall --

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11:16:46 1 Q. Okay.

11:16:46 2 A. -- every single.

11:16:48 3 Q. No, that's okay. Did you review any

11:16:51 4 videos?

11:16:52 5 A. Yes.

11:16:52 6 Q. Okay. What videos did you review?

11:16:55 7 A. I reviewed the video that was provided

11:16:59 8 regarding the incident.

11:17:00 9 Q. Okay. How many video segments were

11:17:00 10 there?

11:17:05 11 A. I don't recall.

11:17:05 12 Q. Okay. Would it have been four?

11:17:08 13 A. I don't recall.

11:17:08 14 Q. Okay. Did you watch each of the videos

11:17:12 15 that was on the disc that was provided to you?

11:17:14 16 A. Yes.

11:17:14 17 Q. Okay. In their entirety?

11:17:16 18 A. Yes.

11:17:17 19 Q. Okay. Was that the first time that you

11:17:21 20 saw those video segments?

11:17:24 21 A. No.

11:17:25 22 Q. Okay. When was the first time that you

11:17:27 23 saw those video segments?

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11:17:27 1 A. When I was served paperwork with
11:17:28 2 the -- regarding the lawsuit and the disc was
11:17:31 3 provided.

11:17:33 4 Q. After you were served, did you watch
11:17:36 5 those videos again?

11:17:37 6 A. Yes.

11:17:38 7 Q. Approximately how many times did you
11:17:40 8 watch those videos?

11:17:44 9 A. I viewed it the -- when I was served
11:17:48 10 and then that I can recall twice with Maeve.

11:17:56 11 Q. Sure. And I'm not going to ask what
11:17:59 12 kinds of discussions that you had with your
11:18:01 13 attorney, that's between you and her, but thank
11:18:03 14 you.

11:18:06 15 So prior to your deposition today, when was
11:18:08 16 the last time that you watched the video?

11:18:11 17 A. Last week, I believe.

11:18:12 18 Q. Okay. And no other times in between
11:18:15 19 the last time that you watched it and your
11:18:18 20 deposition today, no segments or anything?

11:18:21 21 A. No.

11:18:21 22 Q. Okay. So I'm going to --

11:18:21 23 MS. HUGGINS: Other than obviously she was

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11:18:24 1 in attendance with -- for Officer McDermott's.

11:18:24 2 THE WITNESS: Right.

11:18:25 3 MS. HUGGINS: Detective McDermott's.

11:18:25 4 MR. DAVENPORT: Sure.

11:18:26 5 MS. HUGGINS: And they were shown during the
11:18:28 6 course of that deposition.

11:18:29 7 BY MR. DAVENPORT:

11:18:29 8 Q. Sure. So I'm going to show you what's
11:18:32 9 been marked as Exhibit 6. Do you recognize this
11:18:37 10 document?

11:18:37 11 A. Yes.

11:18:37 12 Q. And what do you recognize it to be?

11:18:40 13 A. A 941.

11:18:45 14 Q. Okay. Is the date on here January 1st
11:18:49 15 of 2017?

11:18:49 16 A. Yes.

11:18:49 17 Q. And is the time 4:37 for the time of
11:18:53 18 transport?

11:18:54 19 A. Yes.

11:18:55 20 Q. Okay. Now, the time of transport, what
11:19:00 21 would that represent?

11:19:07 22 A. I believe this was the time that he was
11:19:09 23 brought to ECMC.

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11:19:13 1 Q. Okay.

11:19:14 2 A. To the best of my recollection.

11:19:16 3 Q. Do you know where he was brought to
11:19:18 4 ECMC from?

11:19:18 5 A. Central booking.

11:19:20 6 Q. And how long approximately were you at
11:19:23 7 central booking?

11:19:24 8 A. I don't recall.

11:19:24 9 Q. Okay. Do you remember approximately
11:19:26 10 what time you got to central booking?

11:19:28 11 A. I don't recall.

11:19:29 12 Q. Okay. Did you go straight from central
11:19:32 13 booking to ECMC?

11:19:33 14 A. Yes.

11:19:34 15 Q. Approximately how long did it take you
11:19:37 16 to get to ECMC from central booking?

11:19:39 17 A. I don't recall.

11:19:41 18 Q. Have you ever made the drive from
11:19:43 19 central booking to ECMC, other than this date?

11:19:49 20 A. I don't remember.

11:19:50 21 Q. Okay. Have you ever brought someone in
11:19:56 22 on a 941 form after they had been brought to
11:20:00 23 central booking?

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11:20:01 1 MS. HUGGINS: Form. You can answer.

11:20:03 2 THE WITNESS: I don't recall.

11:20:04 3 BY MR. DAVENPORT:

11:20:04 4 Q. Okay. Approximately --

11:20:05 5 A. For this incident we did.

11:20:09 6 Q. Sure. Sure. Approximately how many
11:20:11 7 times have you used a 941 form before as a police
11:20:15 8 officer or a lieutenant or a detective?

11:20:17 9 A. Numerous.

11:20:18 10 Q. Okay. Approximately how many times is
11:20:20 11 numerous?

11:20:22 12 A. I don't want to give a false estimate.
11:20:26 13 I -- I don't recall.

11:20:26 14 Q. Would it be more than a hundred?

11:20:30 15 A. Possibly.

11:20:30 16 Q. Okay. Would it be more than 50?

11:20:36 17 A. Yes.

11:20:36 18 Q. Okay. So, now, going through this
11:20:41 19 form, what sort of verbal cues did you indicate on
11:20:49 20 this form that Mr. Kistner was exhibiting that made
11:20:53 21 you -- led you to be concerned for his mental
11:20:56 22 health?

11:20:56 23 A. I checked off refusal to respond to

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11:20:59 1 questions, talking to self, hostile, argumentative,
11:20:59 2 belligerent, loud yelling, expresses idea of
11:20:59 3 inflated self-importance, and talks -- oh, I'm
11:20:59 4 sorry.

11:21:09 5 I put refusal to respond to questions,
11:21:11 6 talking to self, hostile, argumentative,
11:21:15 7 belligerent, loud yelling, expresses ideas of
11:21:19 8 inflated self-importance, and talks repeatedly
11:21:24 9 about a single subject, death, religion, illness,
11:21:29 10 government, et cetera.

11:21:30 11 And then in the narrative I put repeatedly
11:21:36 12 called officers Nazis and fascists.

11:21:39 13 Q. Okay. So, now, is there ever -- is
11:21:42 14 there a second page to a 941 form?

11:21:46 15 A. No.

11:21:46 16 Q. No. Is there anywhere where you can
11:21:52 17 add to your narrative besides these two and a half
11:21:56 18 lines that are given to you?

11:21:57 19 A. Just the justification for transport.

11:22:00 20 Q. Yes, for the just -- justification for
11:22:04 21 transport, is there anywhere else where you can add
11:22:06 22 to the narrative besides that section right there?

11:22:09 23 A. What was reported to the police about

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11:22:12 1 the individual.

11:22:12 2 Q. Okay. Now, you chose not to write
11:22:16 3 anything on that line. Why did you not write
11:22:20 4 anything on the section what was reported to the
11:22:22 5 police about this individual?

11:22:24 6 A. I didn't have any information to add to
11:22:26 7 that.

11:22:26 8 Q. Okay. So he was taken to ECMC,
11:22:33 9 correct?

11:22:33 10 A. Yes.

11:22:33 11 Q. Okay. Did he use the sort of language
11:22:38 12 with any of the nurses or physicians that were at
11:22:44 13 ECMC, Nazis, fascists, any other language that
11:22:48 14 would -- I'm sorry. That was a poorly phrased
11:22:49 15 question, strike that.

11:22:50 16 Did Mr. Kistner use any sort of language
11:22:55 17 with any of the physicians or staff at ECMC that
11:23:00 18 would lead you to be concerned for his mental
11:23:03 19 health?

11:23:03 20 MS. HUGGINS: Form. You may answer.

11:23:05 21 THE WITNESS: Yes.

11:23:06 22 BY MR. DAVENPORT:

11:23:06 23 Q. Okay. How did you come to learn about

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11:23:09 1 that language that was used to the physicians or
11:23:11 2 ECMC staff?

11:23:12 3 A. I was present during his transport
11:23:16 4 to -- I don't recall if it was -- it was some type
11:23:20 5 of scan for the transport when he was using the
11:23:25 6 language.

11:23:27 7 Q. Do you recall, would that have been a
11:23:30 8 CAT scan of Mr. Kistner?

11:23:31 9 A. I don't recall exactly what type of
11:23:33 10 scan it was.

11:23:34 11 Q. Okay. Who was that scan done by, was
11:23:37 12 that ECMC staff?

11:23:38 13 A. Yes.

11:23:38 14 Q. Okay. Now, besides the transport, were
11:23:44 15 you ever present in the room where Mr. Kistner was
11:23:48 16 being evaluated?

11:23:49 17 A. No.

11:23:51 18 Q. Okay. Did you talk with any of the
11:23:53 19 ECMC staff or physicians about what was going on
11:23:57 20 for that physical examination of Mr. Kistner?

11:24:00 21 A. No.

11:24:01 22 Q. Okay. Besides Mr. Kistner being
11:24:08 23 transported, did you come to learn about any other

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11:24:11 1 instances or times that Mr. Kistner would have used
11:24:14 2 any language, any verbal cues with ECMC staff that
11:24:19 3 would have led you to be concerned about his mental
11:24:22 4 health?

11:24:22 5 A. Can you repeat that?

11:24:24 6 Q. Sure. Besides Mr. Kistner's transport,
11:24:29 7 were there any other instances of Mr. Kistner using
11:24:33 8 any sort of verbal cues that would cause you to be
11:24:38 9 concerned for his mental health and those verbal
11:24:42 10 cues being directed towards ECMC staff only, not to
11:24:45 11 you?

11:24:45 12 MS. HUGGINS: Form. You can answer.

11:24:46 13 THE WITNESS: The most significant that I
11:24:48 14 can recall at this time was during that transport
11:24:51 15 through the hospital.

11:24:51 16 BY MR. DAVENPORT:

11:24:52 17 Q. Okay. Now, you say the most
11:24:54 18 significant, were there any other instances that
11:24:58 19 you can recall?

11:24:58 20 A. Not that I could recall.

11:24:59 21 Q. Okay. During that first initial visit
11:25:08 22 to ECMC, did you have any conversations with any of
11:25:11 23 the physicians or ECMC staff?

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11:25:12 1 A. I did not.

11:25:13 2 Q. Okay. Do you know if any of the
11:25:15 3 officers had any conversations with any of the ECMC
11:25:18 4 staff?

11:25:19 5 A. Officer McDermott did.

11:25:20 6 Q. Okay. Do you -- were you present for
11:25:23 7 those conversations?

11:25:24 8 A. Yes.

11:25:24 9 Q. Okay. Do you recall what was said
11:25:27 10 between Ms. McDermott and ECMC staff?

11:25:30 11 A. The only conversation I remember that
11:25:33 12 I -- I heard the doctor say was that he stated that
11:25:37 13 he fell on ice.

11:25:38 14 Q. Okay.

11:25:40 15 A. That he had slipped and fell on ice.
11:25:42 16 That's the only thing that I could recall.

11:25:43 17 Q. Would that have been inside of the room
11:25:46 18 where Mr. Kistner was being evaluated?

11:25:49 19 A. No, I stayed in the hallway.

11:25:49 20 Q. Okay.

11:25:52 21 A. I don't recall if I ever went in his
11:25:53 22 room when -- when he was being uncuffed to be taken
11:25:56 23 out, because he was cuffed to the bed, but whenever

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11:25:58 1 he was being evaluated I was in the hallway.

11:26:00 2 Q. Okay. Were you present when

11:26:03 3 Mr. Kistner was uncuffed?

11:26:08 4 A. At what point?

11:26:09 5 Q. Were you part of -- did you actually

11:26:14 6 participate in uncuffing Mr. Kistner from the

11:26:17 7 hospital bed?

11:26:17 8 A. I don't recall.

11:26:18 9 Q. Okay. Do you remember who actually

11:26:21 10 uncuffed Mr. Kistner from the hospital bed?

11:26:23 11 A. I don't recall.

11:26:25 12 Q. Would it have been Officer Schulz or

11:26:32 13 Officer Moriarity?

11:26:33 14 A. When Mr. Kistner was transported from

11:26:37 15 ECMC to central booking, it was just Officer

11:26:42 16 McDermott and myself. Initially when he was

11:26:44 17 brought to ECMC, Officers Schulz and Moriarity were

11:26:51 18 present, so at some point they may have.

11:26:54 19 I'm not certain who had cuffed him to the

11:26:58 20 bed at that point, but I know when he was taken

11:27:00 21 from ECMC to central booking it was just Officer

11:27:02 22 McDermott and myself. So she and I would have been

11:27:03 23 the ones, one of the ones who would have uncuffed

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11:27:06 1 him.

11:27:07 2 Q. Okay. Was he uncuffed at any point
11:27:10 3 before he was transported from ECMC to central
11:27:14 4 booking?

11:27:14 5 MS. HUGGINS: Form.

11:27:15 6 THE WITNESS: Could you clarify?

11:27:16 7 BY MR. DAVENPORT:

11:27:17 8 Q. Was Mr. Kistner uncuffed at any point
11:27:20 9 before you and Ms. McDermott were about to transfer
11:27:24 10 him to central booking from ECMC?

11:27:27 11 A. He would have -- the cuff would have
11:27:27 12 been removed from the bed. He had one cuff to the
11:27:30 13 bed, one arm cuffed. So that would have been
11:27:30 14 removed so he would have been placed in both of his
11:27:34 15 hands put into handcuffs, but I don't recall.

11:27:37 16 Q. Was that handcuff ever removed from his
11:27:41 17 one wrist?

11:27:42 18 MS. HUGGINS: Form.

11:27:49 19 THE WITNESS: I'm not certain. I don't
11:27:52 20 know. I -- I don't recall.

11:27:52 21 BY MR. DAVENPORT:

11:27:52 22 Q. Okay. At any time were you or
11:27:56 23 Ms. McDermott or Officer Moriarity or Officer

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11:28:00 1 Schulz, were any of the officers at ECMC requested
11:28:03 2 by any of the ECMC staff to uncuff Mr. Kistner?

11:28:07 3 A. Not that I could recall.

11:28:09 4 Q. Okay. Approximately how long were you
11:28:12 5 at ECMC before going to central booking, so during
11:28:17 6 that first visit?

11:28:18 7 A. I don't recall.

11:28:19 8 Q. Okay. So, now, turning to the 941
11:28:24 9 form. Refusal to respond to question, that's one
11:28:28 10 of the boxes that you've checked for verbal and
11:28:31 11 behavioral cues. What sorts of questions was he
11:28:36 12 refusing to respond to?

11:28:38 13 A. I don't recall at this time.

11:28:39 14 Q. Okay. I also noticed that there's an O
11:28:44 15 and an R above those boxes, do you know what O and
11:28:49 16 are stands for?

11:28:50 17 A. Yeah, observed and reported -- and/or
11:28:53 18 reported.

11:28:53 19 Q. Okay. So, now, observed would be your
11:28:56 20 personal observations, correct?

11:28:58 21 A. Correct.

11:28:58 22 Q. And reported would be from a
11:29:01 23 third-party?

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11:29:01 1 A. Yes.

11:29:02 2 Q. Okay. Now, another box that you have
11:29:05 3 checked is talking to self. Do you recall
11:29:09 4 Mr. Kistner talking to himself on January 1st of
11:29:12 5 2017?

11:29:12 6 A. Yes.

11:29:12 7 Q. What kinds of things was he saying?

11:29:15 8 A. I don't remember the exact -- exactly
11:29:19 9 what he was saying, but I recall when I was in the
11:29:24 10 hallway, he was talking to himself while he was in
11:29:26 11 the hospital bed.

11:29:27 12 Q. Okay. Was the door closed when
11:29:32 13 Mr. Kistner was being evaluated and you were out in
11:29:34 14 the hall at ECMC?

11:29:35 15 MS. HUGGINS: Form. You can answer.

11:29:38 16 THE WITNESS: It may have been.

11:29:40 17 BY MR. DAVENPORT:

11:29:41 18 Q. So these would have been words that
11:29:44 19 Mr. Kistner spoke while he was in the hospital
11:29:48 20 room, correct?

11:29:48 21 MS. HUGGINS: Form.

11:29:49 22 BY MR. DAVENPORT:

11:29:51 23 Q. That you heard when you were outside

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11:29:52 1 the hospital room?

11:29:53 2 A. These are words that were spoken when
11:29:58 3 he was in the hospital room and I was in the
11:30:00 4 hallway, correct.

11:30:00 5 Q. Okay. But you're not sure if the door
11:30:03 6 was closed or open?

11:30:04 7 A. When he -- when he was in there by
11:30:05 8 himself, I recall the door being partially open so
11:30:11 9 we could see him.

11:30:15 10 Q. Now, who partially opened the door, do
11:30:23 11 you recall?

11:30:23 12 A. I don't.

11:30:27 13 Q. Okay. Was that either you or Officer
11:30:30 14 McDermott that partially opened the door?

11:30:32 15 A. I don't recall.

11:30:35 16 Q. What kinds of things did you observe
11:30:37 17 through that partially open door?

11:30:39 18 A. We could see his self, we could see him
11:30:44 19 laying on the hospital bed.

11:30:46 20 Q. And was it during this time that you
11:30:49 21 saw Mr. Kistner talking to himself?

11:30:52 22 A. Heard him, that's all.

11:30:54 23 Q. Okay. Was there anybody else in the

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11:30:55 1 room besides Mr. Kistner?

11:30:57 2 A. At that time, no.

11:30:59 3 Q. Was there any ECMC staff that was in
11:31:02 4 the room?

11:31:02 5 A. When he was talking to himself, not
11:31:05 6 that I could recall.

11:31:08 7 Q. Approximately -- you can give a
11:31:10 8 percentage on this, approximately how much of the
11:31:13 9 time that Mr. Kistner was at ECMC before being
11:31:17 10 transferred to central booking was he in the room
11:31:22 11 by himself?

11:31:22 12 MS. HUGGINS: Form. You can answer.

11:31:24 13 THE WITNESS: Can you repeat that?

11:31:26 14 BY MR. DAVENPORT:

11:31:26 15 Q. So how -- how much of the time that
11:31:28 16 Mr. Kistner spent at ECMC before being transferred
11:31:31 17 to central booking was he in the hospital room by
11:31:35 18 himself?

11:31:38 19 A. We were right outside the door, so if
11:31:41 20 he wasn't being evaluated, that I could recall. I
11:31:45 21 don't know a specific amount of time.

11:31:48 22 Q. Do you recall approximately how many
11:31:51 23 individuals -- how many ECMC staff individuals

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11:31:58 1 evaluated Mr. Kistner?

11:32:00 2 A. No.

11:32:01 3 Q. Okay. Would it have been more than
11:32:03 4 five?

11:32:05 5 MS. HUGGINS: Form. You can answer.

11:32:07 6 THE WITNESS: I don't recall. I remember
11:32:10 7 one doctor.

11:32:14 8 BY MR. DAVENPORT:

11:32:16 9 Q. So, now, you said that you've done
11:32:19 10 other 941 forms before. Where do you typically
11:32:24 11 send individuals who are being evaluated under a
11:32:28 12 941?

11:32:28 13 A. We always take them to ECMC.

11:32:28 14 Q. Okay.

11:32:33 15 A. To CPEP.

11:32:33 16 Q. Do you typically deal with the same
11:32:38 17 individuals at ECMC in terms of staff there?

11:32:40 18 A. It varies.

11:32:41 19 Q. Okay. Was there anybody there present
11:32:45 20 at ECMC that day that you had recognized from a
11:32:49 21 previous 941?

11:32:51 22 MS. HUGGINS: Form. You can answer.

11:32:54 23 BY MR. DAVENPORT:

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11:32:55 1 Q. Was there anybody there --

11:32:56 2 A. Staff?

11:32:56 3 Q. -- present on January 1st of 2017 that
11:32:59 4 you recognized from a prior time that you had
11:33:02 5 brought an individual to ECMC on a 941?

11:33:05 6 A. I don't recall.

11:33:06 7 Q. Okay. Who would you typically deal
11:33:10 8 with at ECMC for a 941 evaluation?

11:33:14 9 A. For the 941 evaluation we come in
11:33:18 10 through the emergency room entrance, whether it's a
11:33:22 11 941 or a regular medical evaluation, we come in the
11:33:27 12 same way.

11:33:28 13 We stop at the reception window. They're
11:33:33 14 triaged for their vitals, and then they're
11:33:34 15 transported over to the CPEP portion of the
11:33:40 16 hospital.

11:33:40 17 Q. Okay. Do you typically stay with those
11:33:45 18 individuals after they're brought on a 941, do you
11:33:49 19 stay at ECMC?

11:33:50 20 A. We stay with them until they're taken
11:33:55 21 into the secure part of the psychiatric section.

11:33:57 22 Q. And what would that secure part be
11:34:00 23 called, what is that called?

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11:34:04 1 A. CPEP.

11:34:07 2 Q. Okay. And you mentioned the triage,
11:34:10 3 what was the triage referring to?

11:34:12 4 A. Just the part -- so you give your
11:34:13 5 paperwork in and then they sit with a nurse and
11:34:16 6 their vitals are taken; blood pressure,
11:34:19 7 temperature.

11:34:20 8 Q. Are there other individuals, other
11:34:22 9 patients who are in the triage?

11:34:24 10 A. It's a -- it's a room where just that
11:34:27 11 person is evaluated.

11:34:29 12 Q. And that person is in there by
11:34:33 13 themselves?

11:34:33 14 A. While they're being evaluated, yes.

11:34:38 15 Q. Okay. Approximately how many --

11:34:38 16 A. With an officer present, there's an
11:34:40 17 officer for just the vitals for the triage portion.

11:34:41 18 Q. Okay. Do you recall on January 1st of
11:34:45 19 2017, did you stay with Mr. Kistner in the triage?

11:34:49 20 A. I don't recall if we both did or one of
11:34:53 21 us did, myself or Officer McDermott. I don't
11:34:55 22 recall.

11:34:55 23 Q. You and Officer McDermott were

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11:34:57 1 traveling together on that day, correct?

11:34:59 2 A. Yes.

11:34:59 3 Q. And Officer McDermott is here today?

11:35:01 4 A. Yes.

11:35:01 5 Q. Okay. So on that day do you recall

11:35:09 6 leaving the hospital without Officer McDermott?

11:35:13 7 A. No.

11:35:14 8 Q. Do you recall Officer McDermott leaving

11:35:16 9 the hospital without you?

11:35:18 10 A. No.

11:35:19 11 Q. If you weren't in the triage when

11:35:26 12 Mr. Kistner was being evaluated, where else would

11:35:30 13 you have been?

11:35:30 14 A. I could possibly been outside the door

11:35:32 15 using the lavatory. I just -- I don't recall.

11:35:33 16 Q. Do you remember approximately how long

11:35:36 17 Mr. Kistner was in the triage?

11:35:37 18 A. I don't.

11:35:38 19 Q. Okay. Was it more than an hour?

11:35:40 20 A. I don't recall.

11:35:41 21 Q. Okay. When an individual is in the

11:35:44 22 triage, are they evaluated only by nurses or are

11:35:48 23 they also evaluated by a physician?

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11:35:50 1 A. I've only ever seen a nurse.

11:35:53 2 Q. Okay. Now, typically after an
11:36:01 3 individual is brought to CPEP, do you leave ECMC at
11:36:06 4 that time?

11:36:06 5 A. Once they're in the secure part of CPEP
11:36:09 6 then we leave, yes.

11:36:11 7 Q. Okay. Do you remember on that day
11:36:13 8 after Mr. Kistner was brought to CPEP did you stay
11:36:19 9 or did you leave after he was brought into CPEP?

11:36:22 10 A. Left.

11:36:22 11 Q. Left. Okay. Do you remember
11:36:26 12 approximately what time Mr. Kistner was brought to
11:36:29 13 the triage?

11:36:29 14 A. I do not.

11:36:31 15 Q. Okay. Is an individual who's brought
11:36:35 16 on a 941 brought straight to the triage, or is
11:36:40 17 there another place where they are brought before
11:36:43 18 triage?

11:36:43 19 MS. HUGGINS: Form. You can answer.

11:36:44 20 THE WITNESS: Unless there's a backup,
11:36:46 21 because occasionally there's a lot of people,
11:36:48 22 because, like I said, 941s will go through triage
11:36:53 23 as well as people being medically treated, so if

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11:36:55 1 there's a backup, we may have to wait in the
11:36:59 2 hallway or another room they put us in until
11:37:03 3 someone could be seen in the triage.

11:37:05 4 Q. Okay. Do you remember on that day, on
11:37:10 5 January 1st of 2017, did you have to wait in the
11:37:11 6 hallway or did you immediately go into the triage?

11:37:14 7 A. I don't recall.

11:37:14 8 Q. Okay. How many times have you gone to
11:37:18 9 the triage where you had to wait out in the
11:37:18 10 hallway?

11:37:22 11 A. Numerous.

11:37:22 12 Q. Okay. Besides officers, who else
11:37:27 13 brings individuals on a 941 or some sort of other
11:37:32 14 mental health evaluation at CPEP?

11:37:36 15 A. It could also be mental health
11:37:39 16 professionals.

11:37:39 17 Q. Would that be crisis intervention?

11:37:42 18 A. Crisis services.

11:37:42 19 Q. Okay.

11:37:44 20 A. Yes.

11:37:48 21 Q. On these times where you had to wait
11:37:51 22 out in the hallway, were they all officers who had
11:37:56 23 brought the individual in for an evaluation, or

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11:37:59 1 were there also mental health or crisis services
11:38:04 2 workers who brought individuals in for a mental
11:38:07 3 health evaluation?

11:38:08 4 **MS. HUGGINS:** Form. You may answer.

11:38:10 5 **THE WITNESS:** It's been both and for medical
11:38:13 6 treatment as well. Like there have been people who
11:38:17 7 come in on the ambulance who have to wait as well.
11:38:21 8 It's the County medical center, so sometimes if
11:38:23 9 it's backed up for people being seen for mental
11:38:24 10 health issues or for medical.

11:38:27 11 **BY MR. DAVENPORT:**

11:38:27 12 **Q.** Okay. So the triage wouldn't just be
11:38:31 13 for a mental health evaluation?

11:38:34 14 **A.** Correct.

11:38:34 15 **Q.** Okay. Now, that first time that
11:38:40 16 Mr. Kistner was brought to ECMC did he go to a
11:38:43 17 triage?

11:38:45 18 **A.** I don't recall.

11:38:46 19 **Q.** Okay. Where else would he have been
11:38:50 20 brought for that physical examination?

11:38:52 21 **MS. HUGGINS:** Form. You can answer.

11:38:54 22 **THE WITNESS:** Typically we would go through
11:38:57 23 triage, I just don't recall going through the

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11:38:57 1 triage.

11:39:01 2 BY MR. DAVENPORT:

11:39:01 3 Q. Okay. When you were observing
11:39:05 4 Mr. Kistner through the partially open door, was he
11:39:08 5 in a triage room at that time?

11:39:09 6 A. No.

11:39:10 7 Q. Okay. So what room was he in?

11:39:12 8 A. He was in one of the rooms on the
11:39:14 9 other -- when you go back, I don't know what you
11:39:17 10 would call the room, it's in the emergency room,
11:39:20 11 the emergency department.

11:39:22 12 They have some rooms -- they have some
11:39:24 13 sections with just curtains and then they have
11:39:27 14 rooms with doors and he had a room with a door and
11:39:28 15 a window.

11:39:28 16 Q. Okay.

11:39:29 17 A. But it's still in the emergency
11:39:32 18 section. It's not like a room for someone who's
11:39:35 19 admitted.

11:39:36 20 Q. Okay. Now, when you were observing
11:39:41 21 Mr. Kistner through the partially open door, did
11:39:45 22 you observe any sort of physical evaluations that
11:39:47 23 were done of Mr. Kistner?

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11:39:48 1 A. No.

11:39:49 2 Q. Okay. Do you know if Mr. Kistner was
11:39:53 3 evaluated for a head injury while he was at ECMC?

11:39:56 4 A. I don't recall.

11:39:59 5 Q. On the day of the incident do you
11:40:02 6 recall Mr. Kistner complaining about a head injury?

11:40:05 7 A. I don't recall.

11:40:06 8 Q. Okay. Do you recall Mr. Kistner making
11:40:09 9 any sorts of complaints on January 1st of 2017,
11:40:14 10 physical complaints?

11:40:15 11 A. I don't recall anything specific.

11:40:16 12 Q. Okay. Do you remember, do you recall
11:40:20 13 anything generally anything that he was saying to
11:40:24 14 police officers about his physical condition?

11:40:25 15 A. No, I don't recall.

11:40:26 16 Q. Okay. Now, you also have checked here
11:40:31 17 hostile, argumentative, belligerent, loud yelling,
11:40:35 18 where did you observe these behaviors?

11:40:39 19 A. At the hospital.

11:40:41 20 Q. Did you observe them anywhere else?

11:40:48 21 A. I don't recall if it was on the
11:40:50 22 transport or not. The hospital is what I recall.

11:40:53 23 Q. Okay. Who was he hostile,

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11:40:59 1 argumentative, belligerent, loud and yelling, who
11:41:03 2 were those actions directed towards?

11:41:05 3 MS. HUGGINS: Form. You can answer.

11:41:06 4 THE WITNESS: Again, from what I can recall
11:41:10 5 during the transport he was just yelling loudly,
11:41:14 6 using derogatory terms that created a disruption,
11:41:18 7 people were walking away trying to go in a
11:41:22 8 different direction.

11:41:23 9 BY MR. DAVENPORT:

11:41:23 10 Q. Now, when you say the transport, that's
11:41:24 11 referring to taking Mr. Kistner from his hospital
11:41:28 12 room to where he was examined for some sort of an
11:41:31 13 imaging study, correct?

11:41:33 14 A. Correct.

11:41:33 15 Q. Okay. I just want to make sure that
11:41:38 16 wasn't during the transport from ECMC to central
11:41:40 17 booking?

11:41:41 18 A. Correct.

11:41:41 19 Q. Okay. Now, besides the transport, did
11:41:45 20 you observe these types of behaviors anywhere else?

11:41:52 21 A. To the best of my recollection, the
11:41:54 22 hospital is what I remember.

11:41:55 23 Q. Okay. And when you say the hospital,

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11:41:57 1 was that also in his hospital room that he --

11:42:01 2 A. Some of these observations were from
11:42:04 3 his hospital room.

11:42:05 4 Q. Okay. And that would have been
11:42:07 5 something that you observed through the partially
11:42:09 6 open door?

11:42:10 7 A. Correct.

11:42:10 8 Q. Did he exhibit any of these types of
11:42:14 9 behaviors at central booking?

11:42:16 10 A. I don't recall.

11:42:17 11 Q. Okay. Did he exhibit any of these
11:42:19 12 sorts of behaviors at any point when he was in the
11:42:22 13 car with you and Ms. McDermott?

11:42:24 14 A. I don't recall.

11:42:24 15 Q. Okay. The next box that you have
11:42:27 16 checked is expresses ideas of inflated
11:42:31 17 self-importance. Have you ever checked that box
11:42:35 18 before on a 941 form?

11:42:41 19 A. I don't recall.

11:42:42 20 Q. Okay. Is that a box that you check
11:42:45 21 often?

11:42:46 22 MS. HUGGINS: Form. You may answer.

11:42:46 23 THE WITNESS: I have checked it, I just -- I

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11:42:49 1 don't recall how many times or anything specific.

11:42:52 2 BY MR. DAVENPORT:

11:42:53 3 Q. Okay. On January 1st of 2017 what
11:42:55 4 sorts of verbal or behavioral cues led you to
11:42:59 5 believe that Mr. Kistner was expressing ideas of
11:43:03 6 inflated self-importance?

11:43:04 7 A. I don't recall specifically.

11:43:06 8 Q. Okay. What sorts of actions, verbal or
11:43:11 9 behavioral cues, would lead you to check a box
11:43:16 10 expresses ideas of inflated self-importance?

11:43:19 11 A. How they're regarding themselves. I
11:43:22 12 know in -- from what I could recall before someone,
11:43:25 13 and it wasn't the case with Mr. Kistner, saying
11:43:30 14 that they believe they're God or -- those would be
11:43:33 15 examples of self-importance, but I don't recall
11:43:36 16 exactly what Mr. Kistner had expressed as to why I
11:43:43 17 checked the box.

11:43:44 18 Q. Are there ever any other verbal or
11:43:47 19 behavioral cues that would lead you to check that
11:43:50 20 box besides somebody saying that they believe that
11:43:53 21 they're God or Jesus?

11:43:55 22 A. Yes, I -- I just can't recall anything
11:43:56 23 at this time.

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11:43:56 1 Q. Did Mr. Kistner at any time express
11:43:59 2 that he believed that he was God or Jesus?

11:44:02 3 A. Not that I can recall.

11:44:03 4 Q. Okay. The next verbal or behavioral
11:44:09 5 cue that you checked was talks repeatedly about a
11:44:13 6 single subject. And then in parentheses it's
11:44:17 7 death, comma, religion, comma, illness, comma,
11:44:22 8 government, comma, et cetera.

11:44:24 9 Do you recall what that single subject was
11:44:28 10 that Mr. Kistner repeatedly talked about?

11:44:31 11 A. I believe it was in here I put
11:44:33 12 repeatedly called officers Nazis and fascists. And
11:44:36 13 it was hospital staff he referred to as well,
11:44:41 14 feminazis, excuse my language, but he kept
11:44:45 15 referring to lily white pussies.

11:44:48 16 I know that I filled out a 710.30 with his
11:44:51 17 arrest paperwork that I had written -- or I had
11:44:54 18 documented, because at the time I recalled exactly
11:44:59 19 what he had said. And when we filled out our
11:45:01 20 arrest paperwork, I had documented what he had
11:45:04 21 said.

11:45:07 22 Q. So that et cetera that's at the end,
11:45:12 23 does that mean that the four topics that are listed

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11:45:16 1 in parentheses are not all-inclusive?

11:45:19 2 A. Correct.

11:45:20 3 Q. Okay. So there could be other subjects
11:45:23 4 that an individual would talk about that would lead
11:45:26 5 you to check that box, correct?

11:45:28 6 A. Yes.

11:45:29 7 Q. But would you agree that the derogatory
11:45:33 8 terms that Mr. Kistner used would not fall within
11:45:37 9 death, religion, illness, or government?

11:45:39 10 A. Nazi could be part government.

11:45:43 11 Q. Okay. Now, this says talks repeatedly
11:45:50 12 about a single subject. Could this also -- could
11:45:56 13 this box encompass talking repeatedly about
11:46:01 14 anything, does it necessarily have to be a single
11:46:04 15 subject that this individual is repeatedly talking
11:46:08 16 about?

11:46:08 17 A. This one specifically says talks
11:46:09 18 repeatedly about a single subject.

11:46:10 19 Q. Okay. So you would agree that the
11:46:15 20 derogatory terms that Mr. Kistner used there were
11:46:19 21 multiple derogatory terms that were used, correct?

11:46:23 22 A. But with this one the -- like I said,
11:46:26 23 there could be a difference between repetitive and

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11:46:30 1 fixation, but with a single subject, the fixation
11:46:32 2 on the Nazi feminism with the lily white pussy
11:46:35 3 seemed repetitive to me at the time, that was my
11:46:38 4 perception, it was repetitive, single subject, and
11:46:39 5 same -- relating to the same thing over and over
11:46:41 6 and over and over.

11:46:44 7 Q. So the single subject that Mr. Kistner
11:46:48 8 would have been focused on in your own words, what
11:46:52 9 would that have been?

11:46:53 10 A. The -- again, it's in the 710, I don't
11:46:56 11 want to misspeak, I documented what was said, but
11:47:00 12 the fem -- from what I could recall the feminaziism
11:47:04 13 lily white pussies.

11:47:07 14 Q. So would that be the topic or the
11:47:10 15 subject that he was focused on was the feminazis
11:47:15 16 lily white pussy?

11:47:16 17 A. That would be the -- the topic, yes.

11:47:18 18 Q. Okay. Now, I see that another box has
11:47:38 19 been checked here. Appearance ticket issued and
11:47:41 20 that box was checked yes, correct?

11:47:43 21 A. Yes.

11:47:44 22 Q. Okay. So would that indicate that an
11:47:47 23 appearance ticket was issued before the 941 form

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11:47:51 1 was filled out?

11:47:52 2 A. Yes.

11:47:52 3 Q. Okay. And who would that appearance
11:47:55 4 ticket have been issued to?

11:47:56 5 A. Mr. Kistner.

11:47:58 6 Q. Would you hand Mr. Kistner that
11:48:01 7 appearance ticket?

11:48:02 8 MS. HUGGINS: Form.

11:48:07 9 THE WITNESS: I don't recall if it was
11:48:10 10 handed to him, but an appearance ticket is given to
11:48:16 11 the individual.

11:48:18 12 BY MR. DAVENPORT:

11:48:18 13 Q. Okay. Do you know if Mr. Kistner was
11:48:24 14 handcuffed at the time that you filled out this 941
11:48:28 15 form?

11:48:28 16 A. I don't recall.

11:48:29 17 Q. Would this 941 form have been filled
11:48:33 18 out prior to going to ECMC from central booking?

11:48:36 19 A. It could have been filled out -- yeah,
11:48:39 20 it would have been filled out -- I'm sorry. Can
11:48:42 21 you repeat that?

11:48:43 22 Q. Sure. Would this 941 form have been
11:48:46 23 filled out before arriving at ECMC from central

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11:48:50 1 booking?

11:48:50 2 A. Yes.

11:48:50 3 Q. Okay. Do you recall when Mr. Kistner
11:48:52 4 was transported from central booking to ECMC, was
11:48:56 5 he handcuffed at the time?

11:48:57 6 A. I just want to make sure, this -- this
11:48:59 7 would have been filled out before we got to ECMC is
11:49:03 8 what you were asking, correct?

11:49:03 9 Q. Yes.

11:49:04 10 A. Yes.

11:49:04 11 Q. Okay. So now my -- my second question
11:49:07 12 was, would Mr. Kistner have been handcuffed at the
11:49:12 13 time that he was transported from central booking
11:49:12 14 to ECMC?

11:49:13 15 A. Yes.

11:49:13 16 Q. Okay. If an individual is handcuffed,
11:49:17 17 how are they issued their appearance ticket?

11:49:20 18 A. At the time --

11:49:20 19 MS. HUGGINS: Form. You can answer.

11:49:21 20 THE WITNESS: -- they're issued their
11:49:23 21 appearance ticket while at central booking and it's
11:49:26 22 secured, so they have to sign it, I believe.

11:49:28 23 So they would be uncuffed to sign for their

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11:49:32 1 paperwork, unless for some safety issue they may
11:49:35 2 not be and then that would be -- if they weren't
11:49:35 3 safe to be un-handcuffed, it would be documented,
11:49:38 4 it would be indicated that they for whatever reason
11:49:42 5 they could not be un-handcuffed to sign at the
11:49:45 6 time.

11:49:45 7 BY MR. DAVENPORT:

11:49:45 8 Q. Okay.

11:49:46 9 A. But I -- I haven't seen that happen.

11:49:47 10 Q. Okay. Now, after the individual signs
11:49:49 11 the appearance ticket, is the appearance ticket
11:49:54 12 kept by the officers or is the appearance ticket
11:49:58 13 given to someone else? Where does the appearance
11:50:01 14 ticket -- I'm sorry, strike that.

11:50:02 15 After the appearance ticket is signed by the
11:50:05 16 individual who was previously in handcuffs, is that
11:50:08 17 individual put back into handcuffs?

11:50:13 18 A. If they're going to remain in our
11:50:15 19 custody, yes. Otherwise, if they're going to be
11:50:19 20 released, then we would walk them out.

11:50:21 21 Q. If you were taking an individual back
11:50:24 22 to ECMC for a 941 evaluation, would they still be
11:50:28 23 in the custody of the police at that time?

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11:50:29 1 A. Yes.

11:50:30 2 Q. So would that individual still be in
11:50:33 3 handcuffs then at that time?

11:50:34 4 A. Yes.

11:50:35 5 Q. Okay. So an individual who is in
11:50:41 6 handcuffs and on his way to ECMC for a 941 form,
11:50:45 7 where does the appearances ticket -- who -- what do
11:50:47 8 you do with the appearance ticket after it's
11:50:49 9 signed?

11:50:49 10 A. Like I said, usually we would give it
11:50:52 11 to the person. I've had instances at times where
11:50:54 12 someone was handcuffed we'll take it until their
11:50:57 13 next destination and then we -- we can give them
11:51:00 14 their paperwork when they get there.

11:51:02 15 Q. Okay.

11:51:03 16 A. I don't recall in Mr. Kistner's
11:51:06 17 instance.

11:51:06 18 Q. Sure. So if that individual was being
11:51:09 19 taken to the triage at ECMC and that individual is
11:51:15 20 still in handcuffs at the triage, who would you
11:51:20 21 give that appearance ticket to?

11:51:21 22 MS. HUGGINS: Form.

11:51:23 23 THE WITNESS: In triage?

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11:51:24 1 BY MR. DAVENPORT:

11:51:24 2 Q. If the -- if the individual is in
11:51:27 3 triage in handcuffs, who would you give the
11:51:30 4 appearance ticket to?

11:51:31 5 A. The individual may be in possession of
11:51:34 6 their appearance ticket, because it's a piece of
11:51:37 7 paper. Or we wouldn't give it to anyone in triage.

11:51:40 8 Q. Okay. So you wouldn't give it to ECMC
11:51:42 9 staff?

11:51:43 10 A. Not in triage.

11:51:44 11 Q. Okay. Would you give it to any ECMC
11:51:46 12 staff?

11:51:46 13 A. If he was turned over to CPEP and we
11:51:50 14 still had -- we were in possession of any of his
11:51:52 15 property, we would give it to CPEP, whoever it was
11:51:54 16 who took him into that secure portion of -- of
11:51:56 17 their part of the hospital, we would give it to
11:51:59 18 that person.

11:51:59 19 We would give any property that we had
11:52:02 20 turned over that we were still in custody of, we
11:52:05 21 would give it to the CPEP staff when they took
11:52:08 22 Mr. Kistner into the secure part of their section.

11:52:10 23 Q. Would you have to fill out any sort of

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11:52:12 1 a form for what sort of property was turned over
11:52:15 2 for that individual that was admitted to CPEP?

11:52:18 3 A. No.

11:52:19 4 Q. Okay. Do you recall if any property
11:52:24 5 was given to the individual at ECMC that belonged
11:52:28 6 to Mr. Kistner before he was admitted to CPEP?

11:52:31 7 A. I don't recall.

11:52:37 8 MR. DAVENPORT: Okay. You guys want to take
11:52:39 9 a quick five-minute break?

11:52:41 10 MS. HUGGINS: Yeah, that's fine.

11:52:41 11 MR. DAVENPORT: Okay.

11:52:41 12 (Discussion off the record at
11:52:41 13 1152.)

12:03:42 14 (On the record at 1203.)

12:03:42 15 BY MR. DAVENPORT:

12:03:47 16 Q. Now, Ms. Velez, turning your attention
12:03:51 17 again to Exhibit 6. Now, on this 941 form it says,
12:03:57 18 is the responding officer CIT trained; do you see
12:04:00 19 where that is?

12:04:01 20 A. Yes.

12:04:01 21 Q. Why did you not check that box?

12:04:04 22 A. I was not CIT trained at that time.

12:04:07 23 Q. Okay. Was Officer McDermott CIT

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12:04:12 1 trained at that time?

12:04:12 2 A. I don't know.

12:04:13 3 Q. Okay. What do you have to -- what sort
12:04:16 4 of training do you have to go through to become CIT
12:04:22 5 trained?

12:04:22 6 A. Well, at this time when this box was
12:04:25 7 available, I wasn't -- I don't know, but now that I
12:04:27 8 am trained in a specifically titled class, CIT, I
12:04:31 9 know that you have to complete the 32 hours and
12:04:33 10 then you do a ride-along an additional eight hours.

12:04:37 11 I believe it's an additional eight hours,
12:04:37 12 I'm not -- I'm not -- excuse me, I'm not certain if
12:04:40 13 it's included in the 32 hours, but we do the
12:04:40 14 classroom time and then we do a ride-along with
12:04:43 15 crisis services. So I know that is CIT trained.

12:04:48 16 Q. Okay. Is it as of 2019 that you are
12:04:53 17 now CIT trained?

12:04:53 18 A. Yes.

12:04:53 19 Q. Now, the next box says, does individual
12:04:56 20 have active CIT crisis plan; do you see where that
12:04:58 21 is?

12:04:58 22 A. Yes.

12:04:59 23 Q. And that box is also not checked?

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12:05:01 1 A. Yes.

12:05:01 2 Q. Have you ever checked that box before?

12:05:03 3 A. No.

12:05:04 4 Q. Okay. What -- what sorts of -- strike

12:05:08 5 that.

12:05:08 6 What would a CIT crisis plan be?

12:05:13 7 A. I'm not trained on a CIT crisis plan,

12:05:18 8 so I would have to ask either crisis services about

12:05:21 9 that individual if there is a plan in place, but I

12:05:25 10 have never checked that box.

12:05:26 11 Q. Okay. Is a CIT crisis plan required

12:05:34 12 before an individual goes to CPEP?

12:05:38 13 A. Not that I'm aware of.

12:05:40 14 Q. Is a CIT crisis plan required after an

12:05:48 15 individual leaves CPEP?

12:05:49 16 A. I wouldn't know.

12:05:50 17 Q. Okay. That's not part of the crisis

12:05:52 18 intervention training that you received in 2019?

12:05:52 19 A. No, not for the what happens in the

12:05:54 20 CPEP evaluation, no.

12:05:56 21 Q. Okay. Now, turning again to the verbal

12:06:04 22 and behavioral cue talking to self. Now, did you

12:06:10 23 say that that was based on observations while

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12:06:14 1 Mr. Kistner was in his room at ECMC?

12:06:16 2 A. That I could recall, yes.

12:06:18 3 Q. Okay. Do you know if Mr. Kistner was
12:06:21 4 given any sort of a call button at ECMC?

12:06:26 5 A. I -- I know typically beds are equipped
12:06:29 6 with them, but I don't know that he used one.

12:06:33 7 Q. Okay. Is it possible that Mr. Kistner
12:06:38 8 would have been speaking into the call button at
12:06:43 9 his bed at ECMC?

12:06:43 10 A. It's possible that he did. I'm not
12:06:47 11 certain.

12:06:47 12 Q. Okay. Did you ever specifically see
12:06:50 13 Mr. Kistner talking to himself where you were sure
12:06:55 14 that he wasn't speaking into the call button?

12:06:58 15 A. Yes.

12:06:58 16 Q. Okay. Can you describe that?

12:06:59 17 A. He was laying in his bed laying
12:07:03 18 straight talking out loud.

12:07:04 19 Q. And it's impossible that he could have
12:07:08 20 been pressing the call button at the same time?

12:07:11 21 A. He may have been. He appeared to me at
12:07:15 22 the time to be talking to himself.

12:07:16 23 Q. Okay.

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12:07:16 1 A. Okay.

12:07:16 2 Q. But you don't know if he was or wasn't
12:07:19 3 pressing the call button at that time?

12:07:22 4 A. Correct, I don't recall.

12:07:23 5 Q. Okay. Now, you say in your statement
12:07:25 6 for justification for transport that the subject
12:07:28 7 did intentionally throw himself at the patrol
12:07:31 8 vehicle. Was that what you believed based on what
12:07:37 9 you personally saw that day on January 1st of 2017?

12:07:40 10 A. I did not personally see that.

12:07:42 11 Q. Okay. Did somebody tell you that
12:07:46 12 Mr. Kistner threw himself at a police vehicle?

12:07:48 13 A. Yes.

12:07:49 14 Q. And who told you that Mr. Kistner threw
12:07:53 15 himself at a patrol vehicle?

12:07:55 16 A. Officer McDermott and Officer Schulz.

12:07:57 17 Q. Okay. Now, you also have checked, and
12:08:06 18 I'm -- I apologize that there's a hole punch that's
12:08:11 19 through it, there's a check and it looks like it
12:08:15 20 says places self in dangerous situations; do you
12:08:18 21 see where that is?

12:08:18 22 A. Yes.

12:08:19 23 Q. Now, would that have been based off of

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12:08:23 1 your personal observations?

12:08:26 2 **A.** This was what was told to me by two
12:08:31 3 separate officers.

12:08:32 4 **Q.** Okay. But that wasn't based on what
12:08:35 5 you personally observed, correct?

12:08:37 6 **A.** Correct.

12:08:43 7 **Q.** Now, based off of what you have now
12:08:48 8 seen on the video, do you still believe that
12:08:52 9 Mr. Kistner threw himself intentionally at the
12:08:56 10 patrol vehicle?

12:08:56 11 **MS. HUGGINS:** Form. You may answer.

12:08:58 12 **THE WITNESS:** Can you repeat that? I'm
12:08:58 13 sorry.

12:08:58 14 **BY MR. DAVENPORT:**

12:09:01 15 **Q.** Based on what you saw from the video
12:09:03 16 surveillance that you watched last week, as
12:09:03 17 recently as last week, do you still believe that
12:09:07 18 Mr. Kistner intentionally threw himself at the
12:09:10 19 police vehicle?

12:09:11 20 **MS. HUGGINS:** Form. You may answer.

12:09:12 21 **THE WITNESS:** The perspective of the video
12:09:16 22 and my perspective are different. I was told
12:09:22 23 what -- what had happened. And based on what I see

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12:09:26 1 in the video it does appear that way.

12:09:29 2 BY MR. DAVENPORT:

12:09:30 3 Q. It appears that Mr. Kistner threw
12:09:34 4 himself intentionally at the police vehicle?

12:09:37 5 A. From my perspective of what I see in
12:09:37 6 the video, yes.

12:09:38 7 Q. Okay. So that's based on what you saw
12:09:40 8 in the video, then, correct?

12:09:40 9 A. From what I -- like I said, I had seen
12:09:44 10 the video after what was told me, so based on what
12:09:47 11 was told to me and what I see in the video
12:09:51 12 I -- that's still my -- my perspective of what I
12:09:54 13 see in the video.

12:09:54 14 Q. Okay. Excluding what was told to you,
12:09:58 15 based solely on what you see in the video, do you
12:10:01 16 believe that Mr. Kistner intentionally threw
12:10:04 17 himself at the police vehicle?

12:10:05 18 MS. HUGGINS: Form.

12:10:07 19 THE WITNESS: May I answer?

12:10:08 20 MS. HUGGINS: Yes, you may answer, sorry.

12:10:11 21 THE WITNESS: Yes.

12:10:11 22 BY MR. DAVENPORT:

12:10:12 23 Q. Okay. I just want to make sure.

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12:10:15 1 Do you see at the bottom where it says
12:10:17 2 police prints in parentheses and then next to it it
12:10:20 3 says J. Velez?

12:10:22 4 A. Yes.

12:10:22 5 Q. Is that your signature?

12:10:24 6 A. Yes, that's my name.

12:10:26 7 Q. Okay. Do you know if that statement is
12:10:30 8 made under penalties of perjury?

12:10:35 9 A. What statement?

12:10:37 10 Q. Your signature at the bottom, the
12:10:41 11 information that you give on this 941 form, do you
12:10:44 12 know if that is made under the penalties of
12:10:47 13 perjury?

12:10:48 14 MS. HUGGINS: Form. You may answer.

12:10:50 15 THE WITNESS: I do not know if it's made
12:10:53 16 under penalty of perjury.

12:10:55 17 BY MR. DAVENPORT:

12:10:56 18 Q. Okay. Is that anywhere in the CIT
12:10:58 19 crisis training that you received, whether
12:11:00 20 the -- the information that you give on this form
12:11:02 21 is under the penalties of perjury?

12:11:04 22 A. I don't recall.

12:11:05 23 Q. Okay. What about any other classes

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12:11:09 1 that you took or any other training courses that
12:11:13 2 you received from the Buffalo Police Academy, did
12:11:15 3 they ever tell you if the information that you give
12:11:18 4 on a 941 form is given under the penalties of
12:11:22 5 perjury?

12:11:22 6 MS. HUGGINS: Form. You may answer.

12:11:24 7 THE WITNESS: Not that I could recall.

12:11:25 8 MR. DAVENPORT: Okay. Can you please mark
12:11:46 9 this as Exhibit 25.

12:11:46 10 The following was marked for Identification:

11 EXH. 25 Dispatch Monitor Unit
12 History Report

12:12:25 13 BY MR. DAVENPORT:

12:12:26 14 Q. Thank you. Now, I'm showing you,
12:12:28 15 Ms. Velez, what's been marked as Exhibit 25. Do
12:12:31 16 you recognize this document?

12:12:34 17 A. Yes.

12:12:34 18 Q. And what do you recognize it to be?

12:12:37 19 A. It's a call log.

12:12:38 20 Q. Okay. Is there another term that's
12:12:41 21 used for it?

12:12:42 22 A. Dispatch monitor unit history report.

12:12:46 23 Q. Okay. What's the date for this

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12:12:48 1 dispatch monitor?

12:12:49 2 A. 1/1 of 2017.

12:12:51 3 Q. Okay. And which officer does this
12:12:55 4 dispatch monitor correspond with?

12:12:57 5 A. Myself.

12:12:58 6 Q. Okay. And is that your unit sign C242?

12:13:05 7 A. For that specific date, yes, it was.

12:13:07 8 Q. Okay. Was that typically what your
12:13:10 9 call sign would be?

12:13:11 10 A. No.

12:13:11 11 Q. What was typically your call sign at
12:13:15 12 that time?

12:13:15 13 A. C233.

12:13:18 14 Q. Now, why did you have C242 instead of
12:13:22 15 C233 that day?

12:13:24 16 A. Because it was our double-up day where
12:13:27 17 both like I explained earlier, the A wheel and the
12:13:28 18 B wheel, every two weeks there's a day where both
12:13:33 19 wheels work.

12:13:33 20 So the purpose is so the other side can get
12:13:36 21 training, so we alternate every other week so we
12:13:38 22 can get training, but this specific date was a
12:13:40 23 holiday. There were a number of officers off, so

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12:13:44 1 they had to backfill cars with -- like our side
12:13:47 2 would have been the training side, but because
12:13:50 3 there was a manpower issue additional units were
12:13:52 4 needed, so I was just given this call sign.

12:13:58 5 Q. How often --

12:13:58 6 A. To backfill.

12:13:58 7 Q. Oh, I'm sorry. How often do you have
12:14:00 8 double-up days?

12:14:01 9 A. Every two weeks.

12:14:01 10 Q. Okay.

12:14:04 11 A. Once every two weeks.

12:14:05 12 Q. Do you receive training once every two
12:14:08 13 weeks?

12:14:08 14 A. Sometimes we do, sometimes we don't.

12:14:11 15 Q. How often on double-up days do you
12:14:16 16 receive training?

12:14:17 17 A. I don't recall.

12:14:19 18 Q. If you don't receive training, what
12:14:22 19 else would you be doing?

12:14:23 20 A. We would backfill cars or fulfill a
12:14:28 21 different assignment, whether it be work the desk,
12:14:30 22 do a foot patrol.

12:14:37 23 Q. Okay. Now, it says patrol C4; do you

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12:14:45 1 see that?

12:14:45 2 A. Yes.

12:14:46 3 Q. What does C4 refer to?

12:14:49 4 A. The sector, Charlie District four
12:14:55 5 sector.

12:14:55 6 Q. So C would refer to Charlie District?

12:14:58 7 A. Uh-huh.

12:14:59 8 Q. And then four is that's a smaller
12:15:04 9 sector within Charlie?

12:15:04 10 A. Yes.

12:15:05 11 Q. Okay. Was that typically what you were
12:15:08 12 assigned to was the fourth district within Charlie
12:15:12 13 District?

12:15:12 14 MS. HUGGINS: Form.

12:15:12 15 BY MR. DAVENPORT:

12:15:12 16 Q. Or, I'm sorry, strike that.

12:15:13 17 Was that typically what you were assigned to
12:15:17 18 was the fourth part of the Charlie District?

12:15:20 19 A. No.

12:15:21 20 Q. Okay. Where were you typically, what
12:15:25 21 part were you typically assigned to?

12:15:27 22 A. The three sector.

12:15:29 23 Q. The three sector. Do you know why you

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12:15:31 1 were assigned to the four sector at that point?

12:15:36 2 A. There was a need for a four sector
12:15:39 3 coverage that day.

12:15:44 4 Q. Who typically would be assigned to the
12:15:47 5 fourth sector at this time?

12:15:50 6 A. I don't know.

12:15:54 7 Q. Did you typically work with
12:15:57 8 Ms. McDermott?

12:15:57 9 A. Yes.

12:15:57 10 Q. Was she your partner at that time?

12:16:00 11 A. She and I rode together, yes.

12:16:04 12 Q. Did the two of you work the third
12:16:06 13 sector together typically?

12:16:08 14 A. Yes.

12:16:11 15 Q. Okay. Are you and Ms. McDermott
12:16:13 16 friends?

12:16:13 17 A. Yes.

12:16:14 18 Q. And that would be outside of work as
12:16:16 19 well?

12:16:16 20 A. Yes.

12:16:17 21 Q. Do you guys hang out together?

12:16:19 22 A. Yes.

12:16:20 23 Q. What sort of things do you guys do

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12:16:24 1 together outside of work?

12:16:26 2 A. Driveways, seriously, we -- she helped
12:16:30 3 me with my driveway. We'll have dinner. We'll
12:16:38 4 visit each other's house.

12:16:41 5 Q. Now, do you have any children,
12:16:45 6 Ms. Velez?

12:16:45 7 A. I do.

12:16:46 8 Q. Okay. Is Ms. McDermott a godmother or
12:16:51 9 any other sort of title to your children?

12:16:55 10 A. No.

12:16:55 11 Q. How do your children refer to
12:16:59 12 Ms. McDermott?

12:16:59 13 A. Ms. Lauren.

12:17:00 14 Q. Okay. Not aunt or anything like that?

12:17:04 15 A. No.

12:17:06 16 Q. Now, how was it conveyed to you that
12:17:12 17 you and Ms. McDermott would be working the fourth
12:17:14 18 sector rather than the third sector on January 1st
12:17:18 19 of 2017?

12:17:18 20 A. I don't recall specifically, but in
12:17:20 21 briefing we would be told, it's something that
12:17:24 22 would be discussed in briefing.

12:17:25 23 Q. Okay. Now, we talked about an A wheel

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12:17:33 1 and a B wheel. What wheel were you working at the
12:17:36 2 time, you and Ms. McDermott?

12:17:38 3 A. I -- I don't know which side would be
12:17:41 4 labeled the A wheel and B wheel at the time.

12:17:44 5 Q. Okay. During your A wheel or B wheel,
12:17:50 6 who would typically be working the fourth sector?

12:17:56 7 A. On our regular side?

12:17:58 8 Q. Yes, on your regular side.

12:18:00 9 A. I don't recall.

12:18:01 10 Q. Okay. Can you look, please, refer to
12:18:05 11 Exhibit 16 again. I think it's your bottom sheet.

12:18:12 12 A. Okay.

12:18:12 13 Q. Looking through this list of officers,
12:18:17 14 does that refresh your recollection as to who would
12:18:19 15 have been working the fourth sector during your
12:18:24 16 wheel?

12:18:24 17 A. No.

12:18:25 18 Q. Okay. So, now, turning back towards
12:18:32 19 the dispatch monitor, which has been marked as
12:18:35 20 Exhibit 25. Do you see how right before your name
12:18:38 21 there is a six digit number?

12:18:41 22 A. Yes.

12:18:41 23 Q. What does that six digit number refer

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12:18:45 1 to?

12:18:45 2 A. My departmental ID.

12:18:48 3 Q. Okay. Has that departmental ID changed
12:18:51 4 at any time?

12:18:51 5 A. No.

12:18:52 6 Q. So that was issued to you back in 2013?

12:18:55 7 A. Yes.

12:18:56 8 Q. And do you see next to shift where it
12:19:00 9 says second?

12:19:00 10 A. Yes.

12:19:01 11 Q. What does that refer to?

12:19:03 12 A. That would be our day shift or MP2.

12:19:09 13 Q. What would be considered first shift?

12:19:12 14 A. I don't know the specific hours, but
12:19:15 15 typically on patrol we have MP2, which is day
12:19:21 16 shift, we have MP4, which is afternoon shift, we
12:19:25 17 have MP5, which is the overnight.

12:19:29 18 Q. And between MP2 and MP4 what would that
12:19:34 19 shift be considered?

12:19:37 20 MS. HUGGINS: Form.

12:19:38 21 BY MR. DAVENPORT:

12:19:39 22 Q. What would MP3 refer to?

12:19:41 23 A. MP3 is I believe what our community

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12:19:46 1 police officer shift is, it's 10 -- 10 a.m.

12:19:55 2 to -- 10 to 8, 10 to 8:00 p.m.

12:19:56 3 Q. What does a community officer do?

12:19:58 4 A. The community police officer they
12:20:02 5 handle a -- a variety of the different issues that
12:20:06 6 we may have that are not criminal, such as neighbor
12:20:11 7 issues, loud noise, complaints of garbage.
12:20:15 8 They -- they go to community events. They're kind
12:20:18 9 of like the district liaison.

12:20:21 10 Q. How does somebody get assigned to be a
12:20:24 11 community officer?

12:20:25 12 A. It could either be you put in a request
12:20:29 13 to be the community police officer or it's the most
12:20:33 14 junior officer in the district.

12:20:34 15 Q. Have you ever worked as a community
12:20:37 16 officer before?

12:20:37 17 A. No.

12:20:40 18 Q. Now, you said that it could be the most
12:20:44 19 junior officer in the district, would that just be
12:20:48 20 somebody that was chosen from your academy class?

12:20:51 21 A. No, it's different. It's from the
12:20:54 22 Charlie District. So whoever is the most junior
12:20:57 23 who has the least amount of time in the whole

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12:21:00 1 district on all shifts that would be the person
12:21:03 2 that would have to take that position, if nobody
12:21:06 3 else wanted it.

12:21:06 4 Q. Okay. Now, what would MP1 refer to?

12:21:10 5 A. It's a shift. I'm -- I'm not even
12:21:13 6 certain what the hours are for that shift. I've
12:21:17 7 never worked MP1 or know of anyone who worked MP1.

12:21:22 8 Q. Would that individual also be a
12:21:24 9 community officer?

12:21:25 10 A. I'm not certain. Like I said, I don't
12:21:29 11 know who would be assigned to MP1 or what the
12:21:32 12 department has it for.

12:21:33 13 Q. Okay. Now, according to your dispatch
12:21:36 14 monitor, it says that your shift started at
12:21:39 15 6:12 a.m. on January 1st of 2017?

12:21:41 16 A. Yes.

12:21:42 17 Q. Okay. Do you have any reason to
12:21:44 18 dispute the accuracy of that?

12:21:46 19 A. Our -- excuse me. Our shift starts at
12:21:49 20 0600 hours, that's just what time the MCTR shift
12:21:54 21 started in the MCT. So whether -- it's our
12:21:57 22 computer, so whether the lieutenant clicks start
12:22:01 23 shift or the dispatcher logged our shift at that

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12:22:05 1 time.

12:22:05 2 Q. Now, it appears that the first time
12:22:09 3 that you were dispatched was at 6:47 a.m.; is that
12:22:13 4 correct?

12:22:13 5 A. Yes.

12:22:13 6 Q. Okay. And you were dispatched for an
12:22:16 7 alarm at 2021 Genesee Street?

12:22:19 8 A. Yes.

12:22:20 9 Q. Okay. What would you typically be
12:22:23 10 doing from the time that your shift started until
12:22:25 11 the first time that you were dispatched?

12:22:29 12 A. Every day is different.

12:22:30 13 Q. Do you recall what you did on
12:22:34 14 January 1st of 2017?

12:22:35 15 A. I do not.

12:22:38 16 Q. Do you recall this call for an alarm at
12:22:44 17 2021 Genesee Street?

12:22:44 18 A. I do not.

12:22:45 19 Q. Do you know if it is a residential or a
12:22:49 20 commercial building at 2021 Genesee Street?

12:22:51 21 A. I do not recall.

12:22:52 22 Q. Okay. Have you ever appeared for a
12:22:54 23 call other than January 1st of 2017 at 2021 Genesee

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12:22:59 1 Street?

12:22:59 2 A. I don't recall.

12:23:00 3 Q. Okay. Now, the next entry says en
12:23:05 4 route at 6:37 a.m., that would be referring to
12:23:10 5 what?

12:23:14 6 A. That we were put on the call and we
12:23:17 7 were en route to the alarm.

12:23:18 8 Q. And, now, when you say we, that's
12:23:21 9 referring to you and Ms. McDermott?

12:23:22 10 A. Correct.

12:23:23 11 Q. Okay. Do you see how there's a number
12:23:25 12 after en route 17-0010383?

12:23:29 13 A. Yes.

12:23:29 14 Q. What does that number refer to?

12:23:31 15 A. That's the incident number.

12:23:33 16 Q. Okay. Now, it says that you were
12:23:41 17 available again at 7:02 a.m., correct?

12:23:44 18 A. Yes.

12:23:44 19 Q. Okay. Would that have meant that your
12:23:50 20 response to the alarm situation at 2021
12:23:54 21 Street -- or 2021 Genesee Street had at that point
12:23:58 22 ended?

12:23:59 23 MS. HUGGINS: Form.

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12:24:01 1 THE WITNESS: That would -- would be the
12:24:02 2 time that the dispatcher put us available.

12:24:06 3 BY MR. DAVENPORT:

12:24:06 4 Q. Okay. And how does a dispatcher make
12:24:08 5 you available?

12:24:08 6 A. Either we can give a disposition and
12:24:11 7 call ourself back or sometimes they do it on their
12:24:15 8 own. They feel that we've had sufficient time and
12:24:18 9 they put us back in.

12:24:21 10 Q. Has there ever been a time where a
12:24:24 11 dispatcher has thought that you had a sufficient
12:24:26 12 amount of time and you had to then radio in to say
12:24:29 13 that you need more time at a certain incident
12:24:32 14 location?

12:24:32 15 A. Yes.

12:24:33 16 Q. Okay. Did that happen on January 1st
12:24:38 17 of 2017?

12:24:38 18 A. For -- do you want to clarify?

12:24:41 19 Q. For any of the calls.

12:24:43 20 A. For the incident with Mr. Kistner we
12:24:49 21 did need more time. I don't know if a specific
12:24:52 22 call was made out, but we were on it for an
12:24:55 23 extended amount of time, but for the previous calls

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12:24:58 1 I don't recall.

12:24:58 2 Q. Do you recall how many times you had to
12:25:00 3 radio in asking for more time with that incident?

12:25:03 4 A. No.

12:25:05 5 Q. Was it more than once?

12:25:06 6 A. I didn't radio in --

12:25:06 7 Q. Okay.

12:25:08 8 A. -- on that date.

12:25:08 9 Q. Who radioed in asking for more time?

12:25:12 10 A. I don't recall if they specifically
12:25:12 11 asked for more time. Typically, we spend about on
12:25:14 12 average 20 minutes on a call, that's like what the
12:25:18 13 average time is.

12:25:19 14 If we need more time than that, we can ask
12:25:22 15 for it. Or if we feel like we've been on a call
12:25:23 16 for an extended amount of time, we'll let radio
12:25:25 17 know, radio, I'm still on this call.

12:25:27 18 It's not that I've forgotten to give a
12:25:30 19 disposition or I'm in trouble, I just need more
12:25:31 20 time.

12:25:32 21 Q. Now, is that 20-minute average, is that
12:25:34 22 for every sort of call or are there certain calls
12:25:38 23 that, you know, it would be expected to spend

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12:25:40 1 longer at those types of incidents?

12:25:43 2 A. It can --

12:25:43 3 MS. HUGGINS: Form. You can answer.

12:25:44 4 THE WITNESS: It can vary. We just like to
12:25:47 5 update radio at least every 20 minutes.

12:25:51 6 BY MR. DAVENPORT:

12:25:51 7 Q. Okay. Did you update radio every
12:25:54 8 20 minutes at Mr. Kistner's incident?

12:25:57 9 A. I did not radio.

12:25:58 10 Q. Okay. Who was radioing at that time?

12:26:01 11 A. I don't recall everyone who radioed.

12:26:03 12 Q. Was Ms. McDermott radioing?

12:26:05 13 A. I recall her being on the radio.

12:26:07 14 Q. Okay. Would somebody from your car
12:26:09 15 have to radio in to dispatch asking for more time?

12:26:13 16 MS. HUGGINS: Form.

12:26:14 17 THE WITNESS: We don't have to. We can
12:26:17 18 radio from our car or our hand-held radio.

12:26:21 19 BY MR. DAVENPORT:

12:26:22 20 Q. Okay. But you and Ms. McDermott were
12:26:25 21 traveling together that day, correct?

12:26:27 22 A. Correct.

12:26:27 23 Q. Okay. So would it only take one

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12:26:30 1 individual traveling within your car to radio back
12:26:33 2 in to dispatch to let them know that you need more
12:26:38 3 time on a call?

12:26:38 4 A. Pardon?

12:26:38 5 Q. Would it only take one individual,
12:26:41 6 because you and Ms. McDermott were traveling
12:26:44 7 together, would it only take one individual from
12:26:46 8 your car that you and Ms. McDermott were traveling
12:26:49 9 in together to radio back in to dispatch asking for
12:26:49 10 more time?

12:26:49 11 A. Only one person can be on the radio at
12:26:57 12 a time.

12:26:57 13 Q. From your car?

12:26:59 14 A. From either way or we'll step on each
12:27:01 15 other, whether it's from the car or from our body
12:27:03 16 radio, only one person can be on the air at a time,
12:27:04 17 because it'll negate the other person trying to
12:27:06 18 call.

12:27:07 19 Q. Now, is that for all the officers
12:27:09 20 within C District?

12:27:10 21 A. And E District.

12:27:11 22 Q. Okay. So E District and C District
12:27:15 23 both radio in to the same dispatcher?

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12:27:17 1 A. Yes.

12:27:18 2 Q. Are there any other districts within
12:27:26 3 the City of Buffalo that radio in to that
4 dispatcher.

5 THE REPORTER: You've got to slow down,
6 please. Can you ask that question again, please.

7 BY MR. DAVENPORT:

8 Q. Are there any other districts within
12:27:29 9 the City of Buffalo that radio in to the same
12:27:29 10 dispatcher besides C and E District?

12:27:32 11 A. I believe B and D share a dispatcher.
12:27:37 12 And A District shares dispatch with towing, parking
12:27:44 13 enforcement, and I believe dog control. There may
12:27:47 14 be more, but I'm not on that channel.

12:27:50 15 Q. Okay. Now, it appears that at
12:27:57 16 7:09 a.m. you were dispatched to an overdose
12:28:03 17 situation; do you see that?

12:28:04 18 A. Yes.

12:28:04 19 Q. And was that at 385 Paderewski Drive?

12:28:09 20 A. Yes.

12:28:10 21 Q. Okay. It appears that you were there
12:28:14 22 for nearly an hour; do you see that?

12:28:16 23 A. Yes.

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12:28:17 1 Q. Okay. You were next made available at
12:28:20 2 8:07 a.m.?

12:28:21 3 A. Yes.

12:28:24 4 Q. Would it show on this dispatch monitor
12:28:27 5 if you had asked for additional time at a call?

12:28:32 6 A. I'm not certain if it would show on
12:28:35 7 this.

12:28:35 8 Q. Okay. Would it show on the complaint
12:28:37 9 summary report?

12:28:39 10 A. I'm not certain.

12:28:41 11 MS. HUGGINS: Form.

12:28:41 12 BY MR. DAVENPORT:

12:28:41 13 Q. Would it show on any forms that you're
12:28:44 14 aware of?

12:28:45 15 A. Not that I'm aware of.

12:28:46 16 Q. Okay. Do you recall that overdose
12:28:50 17 situation?

12:28:50 18 A. I do.

12:28:52 19 Q. Did the person die?

12:28:53 20 A. No.

12:28:54 21 Q. Do you know what they overdosed on?

12:28:57 22 A. No.

12:28:58 23 MS. HUGGINS: Form.

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12:28:58 1 BY MR. DAVENPORT:

12:29:00 2 Q. Was an ambulance called to that
12:29:03 3 location?

12:29:03 4 MS. HUGGINS: Form. And I'm concerned about
12:29:08 5 HIPAA in terms of questioning and with regard to
12:29:13 6 any medical treatment that was or was not provided
12:29:16 7 for that person. That person is not involved in
12:29:19 8 this lawsuit.

12:29:20 9 MR. DAVENPORT: Sure. They're not involved,
12:29:22 10 but Ms. Velez did respond to that situation. I
12:29:23 11 want to know how she handled it.

12:29:25 12 MS. HUGGINS: I do think that an
12:29:27 13 individual's medical treatment is covered under
12:29:29 14 HIPAA, so I would object and instruct the officer
12:29:32 15 not to answer questions that are specifically
12:29:36 16 relating to medical treatment with relation to that
12:29:39 17 call.

12:29:40 18 MR. DAVENPORT: I didn't ask about medical
12:29:42 19 treatment. I just asked if an ambulance was called
12:29:43 20 or not. If you want to say -- if you want to
12:29:45 21 direct her to not answer that question, you can
12:29:48 22 certainly say that for the record.

12:29:52 23 MS. HUGGINS: I think it gets very close to

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12:29:54 1 the line with HIPAA. What I'm going to instruct to
12:30:12 2 the officer is you may answer that question
12:30:15 3 specifically without going into any details of what
12:30:20 4 medical treatment, if any, was requested or you
12:30:23 5 observed for that individual.

12:30:24 6 BY MR. DAVENPORT:

12:30:25 7 Q. So my question is was an ambulance
12:30:27 8 called for that situation?

12:30:28 9 A. I did not call an ambulance.

12:30:30 10 Q. Do you know if an ambulance was called
12:30:31 11 by anybody else?

12:30:31 12 A. I know Buffalo fire and an ambulance
12:30:33 13 did respond.

12:30:34 14 Q. Okay. Do you know if that ambulance
12:30:40 15 was called by any police officers?

12:30:43 16 A. I don't recall.

12:30:45 17 Q. Was there anyone else there besides the
12:30:48 18 individual who had overdosed?

12:30:52 19 MS. HUGGINS: Form. With the exception of
12:30:54 20 fire and the ambulance that she's already
12:30:56 21 discussed?

12:30:56 22 BY MR. DAVENPORT:

12:30:57 23 Q. Yes.

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12:30:58 1 Outside of emergency responding personnel,
12:31:01 2 was there anybody else there besides the individual
12:31:04 3 who had overdosed?

12:31:05 4 A. Yes.

12:31:06 5 Q. Any family members?

12:31:07 6 A. No.

12:31:07 7 Q. Okay. Any friends?

12:31:11 8 A. This was a warming center, there were
12:31:15 9 numerous people there, strangers amongst strangers,
12:31:19 10 some people may have been friendly. I'm not
12:31:22 11 certain. There was a large number of people there.

12:31:24 12 Q. Okay. Are you aware of any of those
12:31:29 13 friends calling for an ambulance?

12:31:30 14 A. I don't recall.

12:31:31 15 Q. Okay. Now, the next situation that we
12:31:36 16 are looking at is at 8:42 a.m. It says dispatched
12:31:45 17 for a transport; do you know what that's referring
12:31:48 18 to?

12:31:50 19 A. I don't recall that call.

12:31:52 20 Q. Okay. What sorts of things would a
12:31:55 21 transport refer to?

12:31:58 22 A. We could have assisted a citizen
12:32:01 23 somewhere. It -- it could be a number of different

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12:32:04 1 things, I don't recall specifically what this
12:32:06 2 transport is for.

12:32:07 3 Q. Okay. Now, would the police department
12:32:15 4 transport an individual to a location if they don't
12:32:18 5 have a car?

12:32:19 6 A. Depends.

12:32:20 7 Q. Okay. What sorts of situations would
12:32:23 8 the police department transport an individual who
12:32:26 9 doesn't have a vehicle?

12:32:27 10 A. Again --

12:32:28 11 MS. HUGGINS: Form. You may answer.

12:32:29 12 THE WITNESS: -- it can vary.

12:32:31 13 BY MR. DAVENPORT:

12:32:32 14 Q. Would there ever be an instance where
12:32:34 15 somebody calls 911 asking for a police transport to
12:32:39 16 a location?

12:32:40 17 A. Yes.

12:32:40 18 Q. Okay. And would you transport that
12:32:45 19 individual in the back of your police vehicle?

12:32:47 20 A. Depending on the situation, possibly.

12:32:50 21 Q. What sorts of situations would you have
12:32:53 22 to transport an individual who calls in for a 911
12:32:57 23 transport?

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12:32:58 1 A. I --

12:32:58 2 MS. HUGGINS: Form. You can answer.

12:32:59 3 THE WITNESS: I specifically had one where
12:33:03 4 it had an elderly woman and it was extremely cold
12:33:07 5 outside. And she asked for assistance to get to, I
12:33:09 6 forget what relative it was, their house. It was
12:33:09 7 icy, cold, so I absolutely went over.

12:33:13 8 She does have to ride in the back of patrol
12:33:16 9 vehicle, because that's procedure. And I assisted
12:33:20 10 her to where she needed to go.

12:33:21 11 BY MR. DAVENPORT:

12:33:22 12 Q. That wasn't on this day, though,
12:33:23 13 correct?

12:33:23 14 A. Correct.

12:33:24 15 Q. Correct, it wasn't?

12:33:25 16 A. It was not, yes.

12:33:26 17 Q. So it appears that the next time you
12:33:28 18 became available was at 9:26 a.m.; is that correct?

12:33:31 19 A. Yes.

12:33:32 20 Q. Okay. So that would have meant from
12:33:35 21 8:42 a.m. to 9:26 a.m. you were transporting this
12:33:40 22 individual?

12:33:40 23 A. Not necessarily transporting the entire

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12:33:43 1 time.

12:33:43 2 Q. Okay. What else could have been
12:33:45 3 happening during that time?

12:33:46 4 A. This would have been the time that
12:33:49 5 dispatch made us available. I'm not certain what
12:33:53 6 happened in the interim. It could have been a
12:33:56 7 transport. I'm not certain.

12:33:57 8 Q. Okay. So the next situation was at
12:34:01 9 9:37 a.m., there was a child neglect situation; do
12:34:06 10 you see that?

12:34:06 11 A. Yes.

12:34:06 12 Q. Do you remember that call?

12:34:07 13 A. I do not.

12:34:09 14 Q. And that 17-0010471 would refer to the
12:34:16 15 incident number, correct?

12:34:17 16 A. Yes.

12:34:18 17 Q. Okay. Now, it says at 10:12 a.m. you
12:34:25 18 went out of service; what does that refer to?

12:34:28 19 A. We are no longer available for a call
12:34:32 20 as of 10:12.

12:34:33 21 Q. Okay. Is that a break that you're
12:34:34 22 taking?

12:34:35 23 A. I'm not certain why we went out of

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12:34:38 1 service.

12:34:38 2 Q. Okay. Do you get breaks during your
12:34:41 3 shift?

12:34:41 4 A. We can request a break, yes.

12:34:43 5 Q. Okay. How long do you typically take a
12:34:47 6 break, if you do request one?

12:34:48 7 A. It could be 30 minutes.

12:34:50 8 Q. Are you required to request a break at
12:34:54 9 some point during your shift?

12:34:54 10 A. We're not required to, it's optional.

12:34:57 11 Q. Okay. Typically your shifts are 10
12:35:00 12 hours, correct?

12:35:00 13 A. Yes.

12:35:01 14 Q. Okay. Do you ever take a break where
12:35:04 15 you don't request one, are there any mandated
12:35:09 16 breaks?

12:35:09 17 A. There --

12:35:09 18 MS. HUGGINS: Form. You can answer.

12:35:13 19 THE WITNESS: There are no mandated breaks.

12:35:15 20 BY MR. DAVENPORT:

12:35:15 21 Q. Okay. How often do you take 30-minute
12:35:17 22 breaks during your shifts?

12:35:19 23 A. Occasionally.

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12:35:21 1 Q. Okay. More or less than half the
12:35:24 2 shifts that you work?

12:35:26 3 MS. HUGGINS: Form.

12:35:27 4 THE WITNESS: I'm not certain.

12:35:31 5 BY MR. DAVENPORT:

12:35:32 6 Q. Do you ever take a lunch break during
12:35:34 7 your shift?

12:35:34 8 A. That would be the lunch break.

12:35:36 9 Q. Okay. Do you ever eat your lunch in
12:35:39 10 your car?

12:35:39 11 A. Yes.

12:35:40 12 Q. Okay. Is that most of the time?

12:35:42 13 A. Sometimes.

12:35:43 14 Q. Do you sometimes not eat lunch during
12:35:46 15 the day?

12:35:46 16 A. I eat something every day.

12:35:48 17 Q. Okay. Snacks, then?

12:35:50 18 A. It could be a snack or it could be a
12:35:53 19 lunch.

12:35:53 20 Q. Okay. Do you recall eating on
12:35:56 21 January 1st of 2017?

12:35:57 22 A. I do not.

12:36:00 23 Q. Okay. Now, your next call is at

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12:36:07 1 10:36 a.m. and you were dispatched for domestic
12:36:11 2 trouble; do you see that?

12:36:11 3 A. Yes.

12:36:12 4 Q. Do you remember anything about that
12:36:13 5 call?

12:36:14 6 A. I do not.

12:36:15 7 Q. Okay. Now, at 10:57 a.m. it says that
12:36:21 8 you were dispatched for an accident or injury at 37
12:36:26 9 Schmarbeck; do you see that?

12:36:27 10 A. Yes.

12:36:27 11 Q. Who would have made that initial entry
12:36:32 12 for accident or injury?

12:36:33 13 A. The dispatcher enters it.

12:36:35 14 Q. And how would the dispatcher enter that
12:36:38 15 information?

12:36:38 16 A. It could -- it could be a call in from
12:36:41 17 police, it could be a call in from a citizen.
12:36:46 18 However they received the information they would
12:36:49 19 dispatch a call.

12:36:51 20 Q. Okay. Now, it says at 11:22 your
12:37:02 21 location change was ECMC; do you see that?

12:37:05 22 A. Yes.

12:37:09 23 Q. Would that mean that you had arrived at

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12:37:12 1 ECMC or that you were on your way to ECMC?

12:37:17 2 A. It could be either one.

12:37:18 3 Q. Okay. What's your typical practice, do
12:37:25 4 you usually radio in when you arrive at a situation
12:37:28 5 or when you're on your way to a -- or a new
12:37:28 6 location?

12:37:31 7 MS. HUGGINS: Form. You can answer.

12:37:33 8 THE WITNESS: Typically when we're leaving
12:37:34 9 to go to the situation or to the location. Excuse
12:37:39 10 me.

12:37:39 11 BY MR. DAVENPORT:

12:37:40 12 Q. Okay. I asked both of them, so I
12:37:42 13 definitely understand why you said that.

12:37:44 14 Now, it says at 3:37 your location was to
12:37:52 15 CB; do you see that?

12:37:53 16 A. Yes.

12:37:54 17 Q. Does that refer to central booking?

12:37:56 18 A. Yes, I believe so.

12:37:58 19 Q. Okay. Now, at 3:48 p.m. it says on
12:38:09 20 scene; do you see that?

12:38:09 21 A. Yes.

12:38:10 22 Q. Would that mean that you were on scene
12:38:12 23 at central booking?

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12:38:14 1 A. Yes.

12:38:21 2 Q. Now, at 4:36 p.m. your location changed
12:38:27 3 again to ECMC; do you see that?

12:38:28 4 A. Yes.

12:38:29 5 Q. Now, that would mean in your typical
12:38:33 6 practice that you were on your way to ECMC,
12:38:37 7 correct, not necessarily what you did that day, I
12:38:39 8 just want to know typical practice, you normally
12:38:42 9 radio in on your way to a new location?

12:38:44 10 A. Uh-huh.

12:38:45 11 Q. So based on your typical practice that
12:38:48 12 would mean you're on your way to ECMC, correct?

12:38:48 13 A. Yes.

12:38:48 14 Q. Okay.

12:38:53 15 A. But, again, it would depend on how
12:38:56 16 dispatch took our transmission. They would be the
12:38:59 17 ones responsible for entering this.

12:39:01 18 Q. Okay. Now, at 4:37 p.m. it says en
12:39:07 19 route; do you see that?

12:39:07 20 A. Yes.

12:39:08 21 Q. Now, based on that entry, would you say
12:39:11 22 that your location change ECMC was made on your way
12:39:16 23 to ECMC prior to you actually leaving central

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12:39:20 1 booking?

12:39:21 2 A. Can -- can you repeat that again?

12:39:22 3 Q. Sure. So at 4:37 p.m. you see the

12:39:27 4 entry en route, correct?

12:39:28 5 A. Yes.

12:39:28 6 Q. So based on that entry would you say

12:39:33 7 that the entry at 4:36 p.m. that says location

12:39:38 8 change ECMC means that you are ready or getting

12:39:40 9 ready to leave for ECMC rather than at ECMC?

12:39:45 10 MS. HUGGINS: Form. You can answer.

12:39:47 11 THE WITNESS: I would believe so, but,

12:39:50 12 again, as I said, it would depend on how dispatch

12:39:53 13 took our transmission, whether they would put

12:39:57 14 location change as if we arrived or if we were

12:40:00 15 leaving to go. I would take location change to

12:40:06 16 mean we were on our way there.

12:40:08 17 BY MR. DAVENPORT:

12:40:08 18 Q. Okay. Now, the last entry says

12:40:12 19 6:16 p.m. and shift ended; do you see that?

12:40:14 20 A. Yes.

12:40:14 21 Q. Does that mean that your shift had

12:40:17 22 ended at that time?

12:40:20 23 A. This means that our history report is

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12:40:23 1 over. It doesn't necessarily mean that we're still
12:40:26 2 not completing additional paperwork.

12:40:31 3 Q. Now, do you recall on January 1st of
12:40:34 4 2017 after 6:16 p.m. did you have any further work
12:40:38 5 that needed to be done before your shift ended that
12:40:41 6 day?

12:40:41 7 A. I don't recall what time my shift ended
12:40:43 8 that day.

12:40:44 9 Q. Okay. Could it have been after
12:40:48 10 6:16 p.m.?

12:40:48 11 A. It could have been.

12:40:49 12 Q. Okay. How often would you go back or
12:40:52 13 how often -- excuse me, strike that.

12:40:53 14 How often would you complete paperwork after
12:40:58 15 your patrol duties were over?

12:41:00 16 MS. HUGGINS: Form.

12:41:01 17 THE WITNESS: It depends.

12:41:06 18 BY MR. DAVENPORT:

12:41:06 19 Q. Would it be more or less than half of
12:41:09 20 the times that you worked?

12:41:11 21 A. I don't -- I couldn't put a specific
12:41:14 22 number on the times.

12:41:15 23 Q. Okay. Now, when this says shift ended

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12:41:24 1 at 6:16 p.m., do you believe that that entry was
12:41:30 2 made while you were still at ECMC?

12:41:32 3 A. I don't recall.

12:41:35 4 Q. Based on what you see on this dispatch
12:41:38 5 monitor, do you have any reason to believe that
12:41:41 6 that entry would not have been made at ECMC or
12:41:44 7 while you were still at ECMC?

12:41:47 8 MS. HUGGINS: Form.

12:41:47 9 THE WITNESS: I -- I'm not certain where I
12:41:49 10 was at 6:16 at that time.

12:41:51 11 BY MR. DAVENPORT:

12:41:51 12 Q. So I understand that you may not
12:41:54 13 specifically recall, but based on what you see on
12:41:57 14 the dispatch monitor, do you see that there are any
12:42:00 15 other locations that you could have possibly been
12:42:02 16 at at that time?

12:42:03 17 MS. HUGGINS: Form.

12:42:06 18 THE WITNESS: It doesn't -- there's no other
12:42:09 19 location listed on here after ECMC.

12:42:11 20 BY MR. DAVENPORT:

12:42:12 21 Q. So would it be fair to say that that
12:42:14 22 entry was more than likely made at ECMC or while
12:42:18 23 you were still at ECMC?

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12:42:19 1 MS. HUGGINS: Form.

12:42:20 2 THE WITNESS: The dispatcher entered that in
12:42:23 3 there, so I don't know where I was at that time. I
12:42:26 4 don't recall.

12:42:26 5 BY MR. DAVENPORT:

12:42:27 6 Q. Do you recall responding to any other
12:42:30 7 calls after ECMC?

12:42:30 8 A. No.

12:42:31 9 Q. What time should your shift -- was your
12:42:35 10 shift scheduled to have ended that day?

12:42:37 11 A. 4:00 p.m.

12:42:40 12 Q. So if you worked until 6:16 p.m., would
12:42:45 13 you have collected overtime for that day?

12:42:46 14 A. Yes.

12:42:47 15 Q. And how do they determine overtime for
12:42:50 16 officers?

12:42:52 17 A. When we finish our shift -- or when we
12:42:56 18 finish our shift, any additional time over that, I
12:43:00 19 believe it's on the quarter.

12:43:01 20 Q. Okay. So that would be any additional
12:43:05 21 time over 10 hours for each shift or would that be
12:43:09 22 any additional time over 40 hours for a week?

12:43:13 23 A. After 10 hours of the shift.

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12:43:15 1 Q. Okay. So on this day you would have
12:43:18 2 collected overtime for two hours and 16 minutes
12:43:21 3 over your shift?

12:43:22 4 MS. HUGGINS: Form.

12:43:24 5 THE WITNESS: I'm not certain exactly what
12:43:27 6 time my shift ended. So if -- like I said, I'm not
12:43:31 7 sure if it was 6:16 or if I had stayed additional
12:43:35 8 time. I'm not certain.

12:43:36 9 BY MR. DAVENPORT:

12:43:36 10 Q. If you stay additional time to work on
12:43:39 11 paperwork, do you have to make any sort of an entry
12:43:42 12 to end your shift?

12:43:43 13 A. We fill out a form.

12:43:45 14 Q. That's each day?

12:43:46 15 A. If we stay, if we fill out an overtime
12:43:52 16 slip if we stay for every time we stay, yes.

12:43:53 17 Q. Okay. Are there any times that you are
12:43:59 18 required to or that you would fill out paperwork
12:44:03 19 during your regularly scheduled 10-hour shift?

12:44:06 20 MS. HUGGINS: Form.

12:44:07 21 BY MR. DAVENPORT:

12:44:08 22 Q. I'm sorry. That was a bad question.
12:44:10 23 Are you required to patrol for your entire

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12:44:15 1 10-hour shift?

12:44:18 2 A. Minus the break we -- yes.

12:44:19 3 Q. Okay. So there would never be any time
12:44:25 4 that you would end your shift early to complete
12:44:27 5 paperwork, correct?

12:44:29 6 A. It depends. We would still be working,
12:44:32 7 but I may call myself back to the station house to
12:44:35 8 complete paperwork. Or field training officers
12:44:37 9 they -- I believe it's -- I don't recall if it's
12:44:39 10 30 minutes or a little bit longer to complete their
12:44:43 11 field training officer paperwork.

12:44:44 12 So there are instances where you would call
12:44:47 13 yourself out of service just prior to the end of
12:44:50 14 your shift to complete documents.

12:44:51 15 Q. Okay. So I'm going to show you what's
12:45:03 16 been marked as Exhibit 3. Do you recognize that
12:45:07 17 document?

12:45:09 18 A. Yes.

12:45:11 19 Q. And what do you recognize it to be?

12:45:13 20 A. A complaint summary report.

12:45:14 21 Q. Where was the location for that
12:45:16 22 complaint summary report?

12:45:17 23 A. 33 Schmarbeck.

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12:45:20 1 Q. Do you know the individual who was the
12:45:23 2 complainant for that complaint summary report?

12:45:25 3 A. I do not.

12:45:26 4 Q. Have you ever encountered any
12:45:28 5 individuals while working at C District at the
12:45:32 6 location 33 Schmarbeck?

12:45:33 7 A. Not that I can recall.

12:45:36 8 Q. Okay. Do you know which officers
12:45:37 9 responded to that call at 33 Schmarbeck?

12:45:40 10 A. Yes.

12:45:40 11 Q. Okay. And which officers were those?

12:45:43 12 A. Kyle Moriarity and Carl Schulz.

12:45:47 13 Q. What brought you to the scene that day
12:45:50 14 for that complaint summary report?

12:45:54 15 A. From what I can recall, Officer
12:45:58 16 McDermott had responded there before, so she wanted
12:46:02 17 to see if they needed any assistance and give them
12:46:05 18 information that she may have had from previously
12:46:08 19 responding.

12:46:08 20 Q. Okay. Did she talk to you at all about
12:46:11 21 previously responding for that individual?

12:46:14 22 A. I don't recall anything specific.

12:46:16 23 Q. Okay. Did she tell you when

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12:46:18 1 approximately she had previously responded?

12:46:20 2 A. I don't --

12:46:22 3 Q. For that location?

12:46:22 4 A. I don't recall.

12:46:23 5 Q. Did she tell you the information that
12:46:25 6 she wanted to convey to Mr. Moriarity or Mr. Schulz
12:46:29 7 that day?

12:46:30 8 A. I don't recall.

12:46:31 9 Q. Okay. Did she say the name of the
12:46:34 10 individual that she had encountered previously?

12:46:37 11 A. Not that I can recall.

12:46:38 12 Q. Okay. Since this incident has she
12:46:43 13 discussed any incidents that she has responded to
12:46:47 14 at 33 Schmarbeck?

12:46:48 15 A. No.

12:46:49 16 Q. Okay. What about 37 Schmarbeck?

12:46:51 17 A. No.

12:46:53 18 Q. Okay.

12:46:53 19 MS. HUGGINS: Form.

12:46:53 20 BY MR. DAVENPORT:

12:46:54 21 Q. Besides January 1st of 2017, did you
12:46:59 22 ride with Ms. McDermott on any other occasions?

12:47:03 23 A. Yes.

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12:47:03 1 Q. Okay. Were there any other times where
12:47:06 2 a call was made from 33 or 37 Schmarbeck where you
12:47:12 3 and Ms. McDermott went to go and investigate the
12:47:15 4 situation?

12:47:15 5 A. Not that I could recall.

12:47:16 6 Q. But on this specific day she wanted to
12:47:19 7 go to this call at 33 Schmarbeck, because she
12:47:22 8 recalled responding to a previous incident there?

12:47:25 9 A. Yes.

12:47:25 10 Q. Okay. Approximately what time did you
12:47:33 11 arrive at the scene that day?

12:47:35 12 A. I don't recall.

12:47:36 13 Q. Okay. Was it in the morning?

12:47:38 14 A. It was.

12:47:38 15 Q. Do you remember what the weather was
12:47:41 16 like that day?

12:47:42 17 A. Not specifically.

12:47:43 18 Q. Was it cold?

12:47:44 19 A. Yes.

12:47:45 20 Q. Okay. Was it icy?

12:47:47 21 A. I don't recall.

12:47:48 22 Q. Do you recall any trouble walking that
12:47:51 23 day?

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12:47:52 1 A. Not that I could recall.

12:47:54 2 Q. What types of shoes do you typically
12:47:58 3 wear as a patrol officer?

12:48:02 4 A. I wear Bates boots.

12:48:04 5 Q. Okay. And that was the same at that
12:48:06 6 time in January -- on January 1st of 2017?

12:48:06 7 A. Yes, they're department issued. I wear
12:48:08 8 them all the time.

12:48:09 9 Q. Okay. And those are the same boots
12:48:12 10 that are issued today?

12:48:13 11 A. Yes.

12:48:14 12 Q. Do you recall where you were
12:48:17 13 approximately at the time that Ms. McDermott
12:48:20 14 decided that she would help Officer Schulz and
12:48:24 15 Officer Moriarity with that call at 33 Schmarbeck?

12:48:28 16 MS. HUGGINS: Form. You may answer.

12:48:29 17 THE WITNESS: I don't recall.

12:48:30 18 BY MR. DAVENPORT:

12:48:31 19 Q. Do you recall approximately how long it
12:48:32 20 took you to drive from where you were previously to
12:48:34 21 33 Schmarbeck?

12:48:35 22 A. I don't recall.

12:48:36 23 Q. Okay. When you arrived at the scene,

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12:48:38 1 what did you see?

12:48:40 2 A. I don't recall.

12:48:42 3 Q. Was there a car that was present that
12:48:45 4 day?

12:48:50 5 A. I believe there -- we had parked behind
12:48:53 6 a car.

12:48:54 7 Q. Okay. Do you remember the -- the color
12:48:57 8 of that car?

12:48:58 9 A. I do not.

12:48:58 10 Q. Do you remember what type of a car it
12:49:06 11 was?

12:49:06 12 A. I do not.

12:49:07 13 Q. Okay. Was it a large or a small
12:49:10 14 vehicle?

12:49:15 15 A. I think it was a van.

12:49:17 16 Q. Okay.

12:49:17 17 A. I believe it was a van.

12:49:18 18 Q. Okay. When you arrived at the scene,
12:49:22 19 were Officer Schulz or Officer Moriarity outside of
12:49:26 20 their vehicle?

12:49:29 21 A. I could recall -- I -- no, I don't, I
12:49:35 22 don't recall who was outside of the vehicle.

12:49:36 23 Q. Okay. Was there an individual standing

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12:49:41 1 on the sidewalk at that time?

12:49:42 2 A. I don't recall.

12:49:44 3 Q. Do you recall at any point was there an
12:49:47 4 individual standing on the sidewalk?

12:49:49 5 A. I don't recall.

12:49:50 6 Q. Do you recall at any time was Officer
12:49:52 7 Schulz or Officer Moriarity outside of their
12:49:55 8 vehicle?

12:49:57 9 A. Can you?

12:49:59 10 Q. Prior to -- strike that.

12:50:05 11 Do you recall at any time during the
12:50:07 12 incident that was responded to by Officer Schulz
12:50:10 13 and Officer Moriarity at 33 Schmarbeck at any point
12:50:14 14 while you were there were Officer Schulz or Officer
12:50:18 15 Moriarity outside of their vehicle?

12:50:19 16 A. I recall off -- one of them being
12:50:21 17 outside of their vehicle, but I don't recall who it
12:50:23 18 was.

12:50:23 19 Q. Now, the officer that was not outside
12:50:25 20 of their vehicle that was still inside the parked
12:50:29 21 car, did they have their window up or down?

12:50:31 22 A. I don't recall them being inside the
12:50:33 23 parked car. I just -- I just remember one officer

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12:50:36 1 being outside of the car. I don't recall where the
12:50:37 2 other officer was and I don't recall if it was
12:50:39 3 Kyle, Officer Moriarity or -- or Officer Schulz.

12:50:42 4 MS. HUGGINS: Do her a favor and just slow
12:50:45 5 down.

12:50:45 6 THE WITNESS: Yeah, on the sidewalk, I don't
12:50:45 7 recall.

12:50:45 8 BY MR. DAVENPORT:

12:50:45 9 Q. Okay.

12:50:48 10 A. Or if they were in the street. I just
12:50:48 11 remember them being outside of the car, one of
12:50:48 12 them.

12:50:54 13 Q. Do you recall approximately how long
12:50:55 14 you were at the scene responding to that incident
12:50:58 15 at 33 Schmarbeck?

12:50:59 16 A. I do not.

12:51:00 17 Q. Okay. Based on what is recorded on
12:51:04 18 that document, does that refresh your recollection
12:51:05 19 for how long you were at that scene?

12:51:08 20 A. No.

12:51:08 21 Q. Okay. Is there any reason to dispute
12:51:13 22 that the time entries on there that would indicate
12:51:16 23 that Officer Schulz and Officer Moriarity were at

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12:51:19 1 the scene for eight seconds?

12:51:21 2 MS. HUGGINS: Form.

12:51:21 3 THE WITNESS: This would be a dispatch
12:51:23 4 question. They would enter these times and --

12:51:27 5 BY MR. DAVENPORT:

12:51:28 6 Q. Have you ever had to review a complaint
12:51:30 7 summary report before?

12:51:33 8 A. In criminal court, yes.

12:51:35 9 Q. Okay. Were you asked questions about
12:51:38 10 those complaint summary reports?

12:51:40 11 A. I don't recall.

12:51:42 12 Q. Okay. Have you ever had reason to
12:51:44 13 dispute the time entries that are made on those
12:51:48 14 complaint summary reports?

12:51:49 15 A. Not that I could recall.

12:51:51 16 Q. I'm going to show you what has now been
12:51:55 17 marked as Exhibit 4A. Do you recognize that
12:52:00 18 document?

12:52:01 19 A. Yes.

12:52:01 20 Q. And what do you recognize it to be?

12:52:04 21 A. A complaint summary report.

12:52:05 22 Q. Okay. What was the date that this
12:52:11 23 report was created?

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12:52:12 1 A. 1/1 of 2017.

12:52:17 2 Q. Okay. Who are the officers that are
12:52:18 3 listed on this report?

12:52:20 4 A. Carl Schulz, Kyle Moriarity, Lauren
12:52:26 5 McDermott, and Jenny Velez.

12:52:29 6 Q. Now, it says that the location of the
12:52:32 7 incident was 37 Schmarbeck, correct?

12:52:36 8 A. Yes.

12:52:36 9 Q. And that the disposition was a P1375
12:52:40 10 crime report?

12:52:44 11 A. Yes.

12:52:45 12 Q. Okay. And so I'm actually looking
12:52:48 13 right underneath the address where it says
12:52:51 14 disposition one and then P1375 crime reports right
12:52:55 15 on the first page. I don't know. Do you see that
12:52:58 16 right underneath 37 Schmarbeck it's in bold?

12:53:01 17 A. Yes.

12:53:01 18 Q. Okay. Who makes that entry for what
12:53:07 19 the disposition is?

12:53:08 20 A. It could be dispatch or we can enter
12:53:11 21 it.

12:53:11 22 Q. So the officers do have that ability to
12:53:14 23 enter that disposition?

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12:53:15 1 A. The primary officer, yes.

12:53:17 2 Q. Okay. And who would be the primary
12:53:19 3 officer, what does that refer to?

12:53:22 4 A. The --

12:53:22 5 MS. HUGGINS: Form.

12:53:22 6 THE WITNESS: Primary officer would be the
12:53:26 7 officer who was listed as primary on this complaint
12:53:30 8 summary report, if you look at 10:57:17.

12:53:38 9 BY MR. DAVENPORT:

12:53:39 10 Q. Okay. Now, would it be the primary
12:53:45 11 officer at the time of the disposition who would
12:53:48 12 make that entry?

12:53:49 13 A. It would be who -- from the computer
12:53:53 14 the primary officer who was in the computer as the
12:53:56 15 primary officer can log in a disposition.
12:53:59 16 Otherwise, it has to be a radio, it has to be radio
12:54:05 17 that logs it.

12:54:06 18 Q. Would there be any way to tell if it
12:54:09 19 was radioed in or if that officer made that entry
12:54:13 20 themselves?

12:54:14 21 A. I can't tell.

12:54:16 22 Q. Okay. Do you see at 1:14:01 the entry
12:54:20 23 set to primary C241?

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12:54:24 1 A. I'm sorry. What time was that?

12:54:26 2 Q. It would be 1:14:01.

12:54:30 3 A. I see that.

12:54:31 4 Q. You do see that?

12:54:33 5 A. Uh-huh, yes.

12:54:34 6 Q. And that would refer to the call sign

12:54:37 7 C241 becoming the primary officer for this

12:54:41 8 complaint summary report?

12:54:42 9 A. Yes.

12:54:42 10 Q. Okay. Now, based on your general

12:54:46 11 practice, would it be C241 or C230 who would have

12:54:51 12 made that entry for the disposition of P1375 crime

12:54:55 13 report?

12:54:55 14 MS. HUGGINS: Form.

12:54:56 15 THE WITNESS: I don't know who entered that.

12:54:57 16 I don't know if it was a patrol or radio at this

12:55:01 17 time.

12:55:01 18 BY MR. DAVENPORT:

12:55:01 19 Q. Okay. If the entry was made by a

12:55:05 20 patrol officer, would the entry be made by C241 or

12:55:09 21 C230?

12:55:10 22 MS. HUGGINS: Form.

12:55:10 23 THE WITNESS: C24 -- if it was entered by a

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12:55:13 1 patrol officer, C241 would have had the ability.

12:55:16 2 BY MR. DAVENPORT:

12:55:17 3 Q. Okay.

12:55:17 4 A. If the radio had changed them over,

12:55:19 5 because it -- again, I don't know if that's typed

12:55:21 6 in or if it's entered as a -- I don't know how they

12:55:23 7 do it up in dispatch.

12:55:26 8 Q. Okay. Now, it says at 10:55:42 sent to

12:55:36 9 dispatch, ambulance 37 Schmarbeck Avenue, priority

12:55:41 10 six. What does that priority number refer to?

12:55:46 11 A. Dispatch sets priority.

12:55:49 12 Q. Okay. What are the numbers that are

12:55:53 13 used for that priority scale?

12:55:55 14 A. I'm not certain.

12:55:56 15 Q. Do you know the range of numbers that

12:55:59 16 are used?

12:56:03 17 A. I know the scale, one is highest

12:56:06 18 priority. I'm not certain. I can't recall

12:56:12 19 the -- which would be the highest or the lowest

12:56:14 20 priority. I don't know what the scale ends at. I

12:56:17 21 don't recall at this time.

12:56:18 22 Q. Okay. But one you know is the highest

12:56:23 23 priority?

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12:56:23 1 A. Correct.

12:56:24 2 Q. Okay. So a priority six, is that a low
12:56:29 3 or a high priority?

12:56:30 4 A. I'm not certain what the scale is.

12:56:33 5 Q. And you said that that --

12:56:34 6 A. What it's ranged, where the range is,
12:56:37 7 I'm not certain at this time.

12:56:39 8 Q. And you said that that determination is
12:56:41 9 made by dispatch?

12:56:43 10 A. Correct, dispatch sets the priority.

12:56:46 11 Q. Okay. Now, it says at 10:55:56 call
12:56:55 12 type changed, accident or injury, and now it says
12:57:01 13 priority to two; do you see that?

12:57:02 14 A. Yes.

12:57:02 15 Q. What would be the reason that the
12:57:04 16 priority would change from six to two?

12:57:07 17 MS. HUGGINS: Form. You can answer.

12:57:08 18 THE WITNESS: Dispatch would based on
12:57:11 19 whatever dispatch had that would be -- they would
12:57:14 20 determine that.

12:57:14 21 BY MR. DAVENPORT:

12:57:15 22 Q. Okay. In your experience any time that
12:57:21 23 an ambulance is called from dispatch what's the

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12:57:24 1 typical priority that's given to those entries?

12:57:27 2 A. There's no typical priority for the
12:57:30 3 ambulance. It depends on what the situation that
12:57:33 4 the ambulance is responding to.

12:57:34 5 Q. Okay. Now, do you see where it says en
12:57:39 6 route C230 at 10:57:17?

12:57:43 7 A. Yes.

12:57:45 8 Q. Would that be en route for 37
12:58:00 9 Schmarbeck Avenue specifically?

12:58:00 10 A. That would respond to the call, yes.
12:58:09 11 But, again, it's a dispatch entry.

12:58:16 12 Q. Now, do you see where it says en route
12:58:19 13 C241?

12:58:21 14 A. Yes.

12:58:21 15 Q. Okay. And who does C241 refer to on
12:58:30 16 January 1st of 2017?

12:58:31 17 A. Officer McDermott.

12:58:32 18 Q. Okay. Do you see where it says
12:58:35 19 dispatch C242?

12:58:37 20 A. Yes.

12:58:39 21 Q. And who does call sign C242 refer to?

12:58:43 22 A. Myself.

12:58:47 23 Q. Now, based on the entries that it says

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12:58:54 1 en route at 10:57:17, en route C241 at 10:57:39,
12:59:03 2 and dispatched you at 10:57:41, if it was sent to
12:59:10 3 dispatch at 10:55:42, so that would have been
12:59:15 4 before all three entries, who would that call have
12:59:18 5 been made to to dispatch?

12:59:20 6 MS. HUGGINS: Form.

12:59:21 7 BY MR. DAVENPORT:

12:59:21 8 Q. Would that have been an officer or
12:59:24 9 would that have been an individual at the scene?

12:59:24 10 MS. HUGGINS: The 10:55:42 call, is that
12:59:27 11 what you're referring to?

12:59:27 12 BY MR. DAVENPORT:

12:59:27 13 Q. Yes, that's what I'm referring to.

12:59:29 14 A. Could you repeat that question?

12:59:31 15 Q. Sure. So you'll notice that it says en
12:59:34 16 route C230, en route C241?

12:59:38 17 A. Uh-huh.

12:59:39 18 Q. And dispatch C242, and that all three
12:59:42 19 of those entries were made after 10:55:42, which is
12:59:47 20 when the ambulance call was sent to dispatch; do
12:59:51 21 you see that?

12:59:51 22 A. Yes.

12:59:51 23 Q. Now, based on those subsequent entries,

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12:59:55 1 would you say that the call to dispatch was made by
12:59:58 2 an individual or by the officers for the ambulance?

13:00:07 3 MS. HUGGINS: Form. You can answer.

13:00:09 4 THE WITNESS: I'm not certain who called
13:00:11 5 that in to the -- to the ambulance -- or to
13:00:14 6 dispatch.

13:00:14 7 BY MR. DAVENPORT:

13:00:15 8 Q. Okay. At 10:54:42 do you see at the
13:00:18 9 end where it says phone, 716-462-2147?

13:00:23 10 A. Yes.

13:00:23 11 Q. Is that your phone number?

13:00:25 12 A. No.

13:00:26 13 Q. Do you know if that's any of the other
13:00:28 14 officers' numbers at that time?

13:00:32 15 A. I'm not certain whose phone number that
13:00:35 16 is.

13:00:35 17 Q. Okay. Now, do you see at 11:03:52
13:00:41 18 there's another phone call received from the same
13:00:44 19 number, 716-462-2147; do you see that?

13:00:48 20 A. Yes.

13:00:49 21 Q. Okay. And, again, that's not your
13:00:51 22 phone number or any of the other officers',
13:00:54 23 correct?

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13:00:54 1 A. It's not my phone number and I'm not
13:00:57 2 certain whose phone number that is.

13:00:59 3 Q. Okay. Now, do you see at 11:04:20 it
13:01:05 4 says another call, female requests ambulance for
13:01:09 5 injured 54-year-old boyfriend; do you see that?

13:01:12 6 A. Yes.

13:01:13 7 Q. Would that call refer to 716-462-2147?

13:01:20 8 A. It appears that way based on how
13:01:23 9 they're right after each other.

13:01:25 10 Q. Okay. Now, do you see where it says at
13:01:30 11 11:04:26 E-D-I-N-T-F-D?

13:01:34 12 A. Yes.

13:01:35 13 Q. What does that stand for?

13:01:37 14 A. The ambulance is notified.

13:01:38 15 Q. Okay. Now, do you see at 11:07:31
13:01:49 16 where it says cameras on 37 has video of man
13:01:54 17 flopping on the ground?

13:01:55 18 A. Yes.

13:01:56 19 Q. Now, that entry would have been made by
13:01:59 20 dispatch, correct?

13:02:00 21 A. Yes.

13:02:00 22 Q. Okay. And do you see where it says
13:02:04 23 000478 next to that entry?

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13:02:08 1 A. Yes.

13:02:10 2 Q. Does that refer to Joseph Kessler in
13:02:16 3 the top corner, it's top right corner, it says
13:02:20 4 dispatched by 000478 Kessler, Joseph; do you see
13:02:24 5 that?

13:02:24 6 A. Yes.

13:02:25 7 Q. Okay. Now, would the 000478 entry at
13:02:29 8 11:07:31 a.m., would that entry have been made by
13:02:35 9 Joseph Kessler?

13:02:35 10 A. What time was it?

13:02:36 11 Q. 11:07:31.

13:02:38 12 A. It appears that way on this document.

13:02:41 13 Q. Okay. And would Mr. Kessler have made
13:02:46 14 that entry based on what was conveyed to him by
13:02:50 15 either the officers or the individuals at the
13:02:51 16 scene?

13:02:52 17 MS. HUGGINS: Form. You may answer.

13:02:54 18 THE WITNESS: That would be a question for
13:02:56 19 Mr. Kessler.

13:02:56 20 BY MR. DAVENPORT:

13:02:56 21 Q. Okay.

13:02:57 22 A. I'm not certain where he received that
13:02:59 23 information.

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13:03:00 1 Q. Would it be fair to say that
13:03:02 2 that -- those would have been the only sources
13:03:04 3 where he could have received that information?

13:03:06 4 MS. HUGGINS: Form.

13:03:06 5 THE WITNESS: Again, I'm not certain where
13:03:09 6 he -- how they get their information from -- if
13:03:11 7 they get it from the county, 911, officers,
13:03:14 8 civilians. I'm not certain where he got this
13:03:17 9 information from.

13:03:17 10 BY MR. DAVENPORT:

13:03:18 11 Q. Sure. But you did say it would either
13:03:20 12 come from officers or civilians. So would it be
13:03:23 13 fair to say that that entry would have to be made
13:03:26 14 by either an officer based on information that he
13:03:29 15 receives either from an officer or an individual at
13:03:31 16 the scene?

13:03:31 17 MS. HUGGINS: Form.

13:03:32 18 THE WITNESS: It's a possibly.

13:03:32 19 BY MR. DAVENPORT:

13:03:33 20 Q. Okay. Would there be any other sources
13:03:35 21 where he could have received that information from?

13:03:36 22 A. I'm not trained in dispatch.

13:03:38 23 Q. Okay. Now, at 11:22:34 it says

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13:03:44 1 location changed, C230 ECMC; do you see that?

13:03:48 2 A. Yes.

13:03:48 3 Q. And call sign C230, do you know who
13:03:54 4 that referred to on the day of the incident?

13:03:57 5 A. I'm not certain who it was assigned to.

13:04:00 6 Q. But it's neither you or Ms. McDermott,
13:04:04 7 correct?

13:04:04 8 A. Correct.

13:04:04 9 Q. Would it be fair to say that it was
13:04:07 10 either Carl Schulz or Kyle Moriarity?

13:04:10 11 A. I believe so.

13:04:12 12 Q. It wouldn't refer to any other
13:04:14 13 officers, correct?

13:04:14 14 A. Correct.

13:04:15 15 Q. Okay. Now, at 11:22:40 it says
13:04:21 16 location change, C241 ECMC; would that refer to
13:04:26 17 Ms. McDermott?

13:04:27 18 A. Yes.

13:04:27 19 Q. Do you see at 11:22:4 a.m. location
13:04:32 20 change, C242 ECMC?

13:04:34 21 A. Yes.

13:04:34 22 Q. Now, what would cause that six-second
13:04:39 23 difference between you and Ms. McDermott for the

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13:04:42 1 location change?

13:04:42 2 MS. HUGGINS: Form.

13:04:43 3 THE WITNESS: That would be dispatch.

13:04:44 4 BY MR. DAVENPORT:

13:04:45 5 Q. Okay. Did you and Ms. McDermott have
13:04:47 6 to contact dispatch separately in order to change
13:04:51 7 your location?

13:04:52 8 A. We could do it together. Radio
13:04:54 9 may -- dispatch may just do it, because they know
13:04:57 10 we're riding together.

13:04:58 11 Q. Okay. Now, at 11:23:01 C230 will be a
13:05:07 12 941; do you see that entry?

13:05:09 13 A. Yes.

13:05:09 14 Q. Okay. And C230 does not refer you to
13:05:13 15 either you or Ms. McDermott, correct?

13:05:15 16 A. Correct.

13:05:16 17 Q. When it says will be a 941, what does
13:05:19 18 that say to you?

13:05:20 19 MS. HUGGINS: Form.

13:05:20 20 THE WITNESS: Will be a 941 it says it's a
13:05:28 21 mental health evaluation.

13:05:31 22 BY MR. DAVENPORT:

13:05:32 23 Q. Now, at that time, had you, personally,

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13:05:36 1 made any observations of Mr. Kistner that would
13:05:40 2 lead you to believe that he needed a 941 mental
13:05:44 3 health evaluation?

13:05:46 4 A. That I personally observed?

13:05:47 5 Q. You, personally.

13:05:48 6 A. No.

13:05:49 7 Q. Okay. Did you and the other officers
13:05:51 8 discuss whether Mr. Kistner would be subjected to a
13:05:52 9 941 evaluation before leaving Schmarbeck?

13:05:56 10 A. I did not.

13:05:57 11 Q. Do you know if Ms. McDermott discussed
13:06:00 12 with any of the other officers whether Mr. Kistner
13:06:03 13 would be subjected to a 941 --

13:06:03 14 A. I don't --

13:06:03 15 Q. -- examination?

13:06:04 16 A. I don't know.

13:06:04 17 Q. When Mr. Kistner was being brought to
13:06:07 18 ECMC, did you have any reason to believe that he
13:06:09 19 would be evaluated for a mental health evaluation?

13:06:12 20 MS. HUGGINS: Form.

13:06:13 21 THE WITNESS: I don't recall knowing that he
13:06:15 22 was going up for a 941. I recall believing it was
13:06:20 23 going to be a medical evaluation.

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13:06:21 1 BY MR. DAVENPORT:

13:06:22 2 Q. And when you say a medical evaluation,
13:06:23 3 that refers to any physical injuries?

13:06:25 4 A. Correct.

13:06:26 5 Q. What about mental health or anything
13:06:28 6 like that?

13:06:29 7 A. No.

13:06:30 8 Q. Okay. Would physical injuries also
13:06:34 9 include any head trauma?

13:06:36 10 A. It would be a complete evaluation.

13:06:38 11 Q. Okay. So do you know if the location
13:06:53 12 change at 11:22 -- in between 11:22:34 and
13:07:00 13 11:22:46, were you and the other officers at ECMC
13:07:04 14 at that time or were you preparing to leave for
13:07:06 15 ECMC?

13:07:08 16 A. I'm sorry. Can you give me those two
13:07:11 17 times again?

13:07:11 18 Q. Sure. So at location -- at time
13:07:13 19 11:22:34 and 11:22:46, those entries for location
13:07:20 20 change, do you know if you and the other officers
13:07:23 21 would have been traveling to ECMC or if you would
13:07:27 22 have already been at ECMC at that time?

13:07:29 23 A. I don't recall.

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13:07:29 1 MS. HUGGINS: Form. You can answer.

13:07:30 2 THE WITNESS: I don't recall. And that
13:07:31 3 would be, again, up to when we notified dispatch
13:07:35 4 and when they entered it as well.

13:07:37 5 BY MR. DAVENPORT:

13:07:38 6 Q. Okay. If those entries were correct
13:07:43 7 for location change 11:22:34 for C230 --

13:07:43 8 A. Excuse me.

13:07:49 9 Q. -- and then that next entry saying
13:07:51 10 11:23:01, C230 will be a 941, if they were
13:07:57 11 traveling to ECMC during that time, would you agree
13:08:01 12 that that evaluation would have been made -- or
13:08:04 13 that call would have been made while they -- while
13:08:07 14 they were still in their police vehicle?

13:08:09 15 MS. HUGGINS: Form.

13:08:10 16 THE WITNESS: It depends, not necessarily.
13:08:13 17 I'm not sure.

13:08:13 18 BY MR. DAVENPORT:

13:08:14 19 Q. Okay.

13:08:19 20 A. Again, that would depend on when
13:08:22 21 dispatch entered it.

13:08:23 22 Q. Now, do you see at 11:30:12 where it
13:08:27 23 says on scene C230?

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13:08:29 1 A. Yes.

13:08:30 2 Q. Would that have been ECMC that they
13:08:32 3 were on scene for?

13:08:39 4 A. They changed their location to ECMC.

13:08:41 5 And then the next entry would be on scene, it would
13:08:44 6 appear to be that way.

13:08:45 7 Q. Okay. Do you see at 11:30:35 C230
13:08:49 8 suspect broke mirror on car 473 intentionally?

13:08:54 9 A. Yes.

13:08:54 10 Q. Okay. And that entry would have been
13:08:58 11 made based off of information given by the
13:09:01 12 individual with call sign C230?

13:09:04 13 A. This just said it's information per
13:09:09 14 C230.

13:09:12 15 Q. It says -- I'm sorry. It says
13:09:15 16 information per --

13:09:15 17 A. This is from -- from C230 that this
13:09:18 18 information is coming in there.

13:09:20 19 Q. Okay. So the C230 before that
13:09:23 20 information, that means that that information came
13:09:26 21 from call sign C230, correct?

13:09:29 22 A. It appears to be that way, yes. The
13:09:31 23 dispatch entered it, yes.

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13:09:33 1 Q. Now, do you see at 1:14:01 where it
13:09:36 2 says set to primary C241?

13:09:37 3 A. Yes.

13:09:37 4 Q. And C241 would refer to Ms. McDermott,
13:09:41 5 correct?

13:09:41 6 A. Yes.

13:09:41 7 Q. Were you part of that discussion for
13:09:44 8 Ms. McDermott being set to the primary officer?

13:09:47 9 A. Not that I could recall.

13:09:48 10 Q. Okay. Do you know why Ms. McDermott
13:09:53 11 was set to the primary officer?

13:10:00 12 A. I don't recall.

13:10:01 13 Q. Okay. Now, you and Ms. McDermott did
13:10:07 14 not transfer or take Mr. Kistner to ECMC, correct?

13:10:11 15 A. Correct.

13:10:12 16 Q. Okay. Why didn't you and Ms. McDermott
13:10:16 17 take Mr. Kistner to ECMC?

13:10:18 18 A. From what I can recall, he was placed
13:10:21 19 into the rear of Officer Moriarity and Officer
13:10:25 20 Schulz's car and they -- they transported him up.

13:10:28 21 I don't recall the reason why he wasn't
13:10:30 22 placed in our car, for what reason, I don't recall.

13:10:33 23 Q. Do you remember any sort of a

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13:10:35 1 discussion between you and the other officers who
13:10:41 2 would stay at ECMC at this time?

13:10:43 3 A. I don't recall the conversation.

13:10:44 4 Q. But do you recall having that sort of
13:10:47 5 type of -- that sort of a conversation?

13:10:49 6 A. No.

13:10:49 7 Q. Okay. Why was it that you and
13:10:52 8 Ms. McDermott stayed at ECMC and Mr. Schulz and
13:10:55 9 Mr. Moriarity left?

13:10:56 10 A. That is the decision that was made. I
13:10:59 11 just don't recall the -- having the conversation or
13:11:02 12 the context of it. I don't recall if -- I just
13:11:05 13 don't recall it.

13:11:07 14 Q. So you said generally you work the
13:11:10 15 6:00 a.m. to 4:00 p.m. shift, correct?

13:11:12 16 A. Yes.

13:11:14 17 Q. At any times are you tired during your
13:11:17 18 shifts?

13:11:18 19 MS. HUGGINS: Form.

13:11:21 20 THE WITNESS: Sometimes.

13:11:22 21 BY MR. DAVENPORT:

13:11:23 22 Q. Okay. Do you recall being tired for
13:11:26 23 whatever reason during this shift?

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13:11:29 1 A. I don't recall.

13:11:30 2 Q. Okay. Do you recall what you did the
13:11:32 3 night before January 1st of 2017?

13:11:34 4 A. I don't recall.

13:11:35 5 Q. What do you typically do on a New Years
13:11:40 6 Eve?

13:11:40 7 A. Well, I'm a mom and my -- I have a
13:11:43 8 little guy. At the time he would have been was it
13:11:48 9 January '17, three, so I have a three-year-old, so
13:11:54 10 I -- I don't recall, but I know I wasn't out.

13:11:56 11 Q. Okay. Did you have any friends over?

13:12:00 12 A. Not that I recall.

13:12:01 13 Q. Okay. Did you have any police officers
13:12:06 14 over to your house the night before?

13:12:08 15 A. Not that I could recall. I
13:12:09 16 don't -- yeah, not that I could recall.

13:12:14 17 Q. Okay. Now, do you see at 2:45:35 C241
13:12:21 18 NMT?

13:12:21 19 A. Can you repeat that time again?

13:12:23 20 Q. It would be 2:45:35 C241 MNT?

13:12:29 21 A. Yes.

13:12:30 22 Q. Okay. What does NMT refer to?

13:12:34 23 A. Needed more time.

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13:12:35 1 Q. Needed more time. Okay. Does dispatch
13:12:41 2 always make entries on complaint summary reports
13:12:44 3 when an officer requests more time?

13:12:47 4 A. That would be a question for dispatch
13:12:49 5 and who the dispatcher is. Sometimes they change
13:12:54 6 out during the shift, so some may, some may not.

13:12:58 7 Q. So there's no automatic entry that's
13:13:01 8 made after an officer requests more time, correct?

13:13:03 9 A. Correct.

13:13:04 10 Q. And you would agree at this time you
13:13:09 11 had spent nearly four hours on this call, correct?

13:13:13 12 MS. HUGGINS: Form. You can answer.

13:13:17 13 THE WITNESS: What time are we at now, 2:45,
13:13:21 14 correct.

13:13:21 15 BY MR. DAVENPORT:

13:13:22 16 Q. Okay. Do you recall if at any other
13:13:26 17 time you asked for more time from dispatch?

13:13:29 18 A. I -- I didn't.

13:13:29 19 Q. Do you recall if Ms. McDermott at any
13:13:31 20 time asked for more time?

13:13:33 21 A. I don't recall.

13:13:33 22 Q. Okay. But it's typically every
13:13:36 23 20 minutes, correct, that an officer asks for more

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13:13:39 1 time on a certain call?

13:13:41 2 MS. HUGGINS: Form.

13:13:41 3 THE WITNESS: Not typically. We try, we
13:13:44 4 try, but it doesn't always happen.

13:13:45 5 BY MR. DAVENPORT:

13:13:45 6 Q. Okay. Do you know if that request for
13:13:47 7 more time would have been made at ECMC or a
13:13:50 8 different location?

13:13:50 9 A. It appears based on this complaint
13:13:54 10 summary it was at ECMC.

13:13:56 11 Q. Okay. Now, at 3:37:06 it says location
13:14:01 12 changed C241 CB. And then at it would be 3:37:09
13:14:07 13 location changed C242 CB. Now, C -- CB refers to
13:14:13 14 central booking, correct?

13:14:15 15 A. Correct.

13:14:15 16 Q. And that would be you and Ms. McDermott
13:14:19 17 were on your way to central booking?

13:14:21 18 A. Yes.

13:14:22 19 Q. Okay. And then the next entry says
13:14:28 20 3:48:31 on scene C242. And then at 3:48:35 it says
13:14:36 21 on scene C241. Would that refer to you and
13:14:41 22 Ms. McDermott being at central booking at that
13:14:44 23 time?

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13:14:44 1 A. It appears to be so, yes.

13:14:46 2 Q. Okay. Now, when it says 4:36:51 and
13:14:52 3 4:36:55 location changed C241, C242 to ECMC; do you
13:14:59 4 see that?

13:14:59 5 A. Yes.

13:15:00 6 Q. Okay. And that would refer to you and
13:15:03 7 Ms. McDermott going to ECMC?

13:15:05 8 A. Yes.

13:15:06 9 Q. Okay. So that would mean that you and
13:15:13 10 Ms. McDermott spent approximately 45 minutes at
13:15:18 11 central booking?

13:15:20 12 A. If dispatch entered this at the -- like
13:15:22 13 I said, when we made the call at the right time, it
13:15:27 14 appears to be that way, yes.

13:15:27 15 Q. Okay. Do you have any reason to
13:15:30 16 dispute that you and Ms. McDermott spent 45 minutes
13:15:33 17 at central booking?

13:15:35 18 A. I don't recall the exact amount of time
13:15:36 19 we were there.

13:15:36 20 Q. Now, when you arrived at central
13:15:38 21 booking, was Mr. Kistner in handcuffs?

13:15:39 22 A. Yes.

13:15:40 23 Q. What did you do, did you walk into

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13:15:43 1 central booking, I'm assuming, with Mr. Kistner in
13:15:47 2 handcuffs?

13:15:48 3 A. We walk into the -- yes, into central
13:15:50 4 booking with him in handcuffs.

13:15:52 5 Q. Okay. Did you speak to anybody at
13:15:54 6 central booking at that time?

13:15:56 7 A. I don't recall who went up to the
13:15:58 8 window with Officer McDermott and myself, because
13:16:01 9 we have to produce our paperwork at -- to the
13:16:04 10 report technician at the window. I don't remember
13:16:07 11 which one of us had done that.

13:16:09 12 Q. What sort of paperwork do you produce
13:16:12 13 to the individual at central booking?

13:16:14 14 A. The arrest form.

13:16:15 15 Q. Okay. Any other paperwork besides the
13:16:19 16 arrest form?

13:16:19 17 A. Medical clearance paperwork, if we have
13:16:22 18 it.

13:16:22 19 Q. Okay. Now, for Mr. Kistner, did you
13:16:26 20 have a medical clearance form?

13:16:28 21 A. We had his discharge paperwork, I
13:16:30 22 believe.

13:16:30 23 Q. Okay. So you would have provided his

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13:16:36 1 discharge paperwork to the individual at central
13:16:38 2 booking?

13:16:39 3 A. We would, any documents we have we
13:16:41 4 would give them to central booking.

13:16:43 5 Q. Okay. Besides the arrest form and
13:16:45 6 medical clearance form, do you recall any other
13:16:48 7 paperwork that you had for Mr. Kistner?

13:16:50 8 A. I don't recall any other that we had.

13:16:52 9 Q. Okay. After producing that paperwork
13:16:55 10 to the person at central booking, did you have any
13:16:58 11 further conversations with that individual?

13:17:00 12 A. Again, I don't remember who produced
13:17:01 13 it. I don't know if Officer McDermott or myself
13:17:03 14 did, but I don't recall the conversation.

13:17:05 15 Q. So it was one of you, but not both of
13:17:08 16 you?

13:17:09 17 A. Correct, one of us would. I mean, both
13:17:10 18 of us could go up to the window, but one of us
13:17:13 19 would hand over paperwork. I just don't recall
13:17:17 20 which one of us did.

13:17:18 21 Q. Now, after either you or Ms. McDermott
13:17:18 22 handed the paperwork to the person at central
13:17:21 23 booking, what would you and Ms. McDermott do next?

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13:17:24 1 MS. HUGGINS: Form. You can answer.

13:17:26 2 THE WITNESS: Mr. Kistner would be sitting
13:17:28 3 on a bench while we handed in the paperwork, any
13:17:32 4 property he had, anything like that, we would also
13:17:35 5 give that for inventory.

13:17:37 6 Then we would just wait for the report
13:17:39 7 technician to complete entering the information,
13:17:42 8 because they have to do background warrant checks,
13:17:47 9 anything like that, and then the cell block
13:17:50 10 attendants call us into the next room.

13:17:52 11 Q. Do you remember or recall who the
13:17:54 12 report technician was on January 1st of 2017?

13:17:57 13 A. I do not.

13:17:58 14 Q. Okay. Do you recall who the
13:17:59 15 individuals at central booking who would have been
13:18:02 16 the search attendants?

13:18:03 17 A. I do not.

13:18:04 18 Q. Okay. Was their name Joseph?

13:18:07 19 A. I don't recall.

13:18:08 20 Q. Have you ever come across a -- an
13:18:12 21 individual at central booking who does the searches
13:18:16 22 named Joseph?

13:18:19 23 A. I -- is that a first name or a last

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13:18:22 1 name, I don't --

13:18:23 2 Q. First name.

13:18:23 3 A. Yeah, I don't recall.

13:18:24 4 Q. Okay. Joseph Buyers, does that ring a
13:18:26 5 bell for you?

13:18:27 6 A. The name sounds familiar, but I
13:18:31 7 can't -- I can't even picture who that is.

13:18:32 8 Q. Okay. So besides running a background
13:18:40 9 search for arrest warrants and other information,
13:18:44 10 what else does the report technician do at central
13:18:48 11 book?

13:18:48 12 A. I'm aware that they do that, but I'm
13:18:52 13 not trained in being a report technician, so I
13:18:53 14 don't know exact -- I don't know everything that
13:18:53 15 they do once we give over the paperwork.

13:18:56 16 Q. What information would you need to
13:18:58 17 receive from the report technician before having
13:19:02 18 Mr. Kistner searched?

13:19:05 19 MS. HUGGINS: Form.

13:19:06 20 THE WITNESS: We would just -- no
13:19:07 21 information. We would just -- they would -- if he
13:19:08 22 had a warrant or something we weren't aware of,
13:19:11 23 they would put that on -- on the paperwork, but all

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13:19:14 1 they do is just give us our paperwork back once
13:19:17 2 they entered it.

13:19:18 3 BY MR. DAVENPORT:

13:19:18 4 Q. Okay. Did you receive any sort of
13:19:20 5 paperwork from the report technician before
13:19:23 6 Mr. Kistner was searched?

13:19:24 7 A. No, we just get a copy of our arrest
13:19:26 8 form and we go back.

13:19:27 9 Q. Now, when you say go back, are you
13:19:30 10 talking about ECMC?

13:19:31 11 A. No. I'm sorry. We go back to the room
13:19:33 12 with the cellblock attendants where they do
13:19:36 13 fingerprinting, mug shots, and search.

13:19:39 14 Q. Okay. Where is that room in relation
13:19:42 15 to the report technician who I think you described
13:19:46 16 as being behind a window?

13:19:47 17 A. Uh-huh.

13:19:48 18 Q. Where is that search room in relation
13:19:51 19 to it?

13:19:52 20 MS. HUGGINS: Form. She needs a yes or no.

13:19:55 21 THE WITNESS: Yes. It's down the hall to
13:19:57 22 the left through another door.

13:19:58 23 BY MR. DAVENPORT:

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13:19:59 1 Q. Okay. Did you go with Mr. Kistner to
13:20:01 2 that search room?

13:20:02 3 A. I would have went to the search room.
13:20:06 4 I don't recall which one of us stayed in the search
13:20:09 5 room, because typically one of us goes through to
13:20:13 6 do the arrest paperwork while the person is being
13:20:16 7 processed.

13:20:16 8 One of us will stay with the prisoner. One
13:20:16 9 of us will do paperwork. So somebody always has to
13:20:20 10 stay with the prisoner, but I just don't know which
13:20:22 11 one of us had done that.

13:20:24 12 Q. Okay. Do you know what sort of a
13:20:27 13 search Mr. Kistner received when he was at central
13:20:30 14 booking?

13:20:30 15 A. I am in the room, but I'm behind a
13:20:34 16 curtain. The men search males, so I'm not certain
13:20:37 17 exactly what they did.

13:20:41 18 Q. Now, is that decision of what type of a
13:20:44 19 search they'll receive, is that decision made by
13:20:47 20 the cell block attendants?

13:20:49 21 MS. HUGGINS: Form.

13:20:50 22 THE WITNESS: I'm not trained, they have
13:20:53 23 their own training, they know the extent of the

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13:20:56 1 search that they're allowed to do.

13:20:58 2 BY MR. DAVENPORT:

13:20:59 3 Q. I guess my question is do police
13:21:02 4 officers ever give their input for what type of a
13:21:05 5 search an individual should receive?

13:21:07 6 A. No, I don't. I don't know what other
13:21:10 7 officers may or may not do, but I -- I don't.

13:21:11 8 Q. Do you know what Mr. Kistner was
13:21:14 9 charged with on January 1st of 2017?

13:21:15 10 A. I do.

13:21:16 11 Q. What was he charged with?

13:21:18 12 A. Criminal mischief and disorderly
13:21:21 13 conduct, I believe.

13:21:21 14 Q. Did you and Ms. McDermott know that
13:21:24 15 prior to arriving at central booking what he would
13:21:28 16 be charged with?

13:21:29 17 A. Yes.

13:21:29 18 Q. Okay. Based on those charges, what
13:21:31 19 type of a search would an individual receive?

13:21:34 20 MS. HUGGINS: Form. You can answer.

13:21:35 21 THE WITNESS: Again, based on my experience,
13:21:38 22 I'm not a cellblock attendant, it's the same search
13:21:42 23 for -- from what I've seen with females. It's the

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13:21:45 1 same search they receive every time.

13:21:48 2 Regardless of the charges, it's procedural,
13:21:48 3 but I'm not trained. I'm not a trained cellblock
13:21:53 4 attendant, so I don't know what their policy and
13:21:55 5 procedure is.

13:21:56 6 BY MR. DAVENPORT:

13:21:56 7 Q. So what sort of a search is it that
13:22:00 8 individuals receive? You're saying it's
13:22:00 9 consistent, so what type of search is that?

13:22:01 10 A. For the females that I've observed,
13:22:04 11 strip search.

13:22:05 12 Q. Okay. And you have no reason to think
13:22:08 13 that males are not also subjected to strip search?

13:22:12 14 MS. HUGGINS: Form.

13:22:12 15 THE WITNESS: I'm not certain.

13:22:14 16 BY MR. DAVENPORT:

13:22:14 17 Q. Okay. And that's for every sort of
13:22:17 18 arrest where a person is being booked?

13:22:19 19 A. Every arrest I've taken down that's a
13:22:21 20 female that I've observed it was the same search.

13:22:25 21 Q. Would that be -- is an individual taken
13:22:27 22 to central booking if they have a misdemeanor?

13:22:30 23 A. Yes.

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13:22:30 1 Q. And they still receive a strip search?

13:22:34 2 A. Every arrest I've taken down for
13:22:36 3 females that I've observed it's always been the
13:22:39 4 same search.

13:22:40 5 Q. And that's even if they are going to be
13:22:44 6 released on an appearance ticket?

13:22:45 7 A. For the ones that I've been present
13:22:49 8 for, yes.

13:22:49 9 Q. Okay. There are no exceptions to an
13:22:55 10 individual not receiving a strip search?

13:22:57 11 MS. HUGGINS: Form.

13:22:58 12 THE WITNESS: That would be, again, with the
13:23:01 13 cellblock attendants and their training and their
13:23:04 14 policy and procedures.

13:23:05 15 BY MR. DAVENPORT:

13:23:05 16 Q. But no arrests that you have personally
13:23:08 17 made?

13:23:08 18 A. Could you repeat that?

13:23:10 19 Q. So no arrests that you have personally
13:23:11 20 made where there was an exception why an individual
13:23:13 21 who was brought to central booking did not receive
13:23:15 22 a strip search?

13:23:15 23 MS. HUGGINS: Form. You may answer.

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13:23:22 1 THE WITNESS: Not that I could recall.

13:23:23 2 BY MR. DAVENPORT:

13:23:23 3 Q. Okay. How many arrests have you made

13:23:26 4 during your career?

13:23:28 5 A. I don't recall a specific number.

13:23:30 6 Q. Is it more than a hundred?

13:23:31 7 A. Yes.

13:23:32 8 Q. Okay. Is it more than 200?

13:23:35 9 A. Possibly.

13:23:35 10 Q. Okay. I'm going to show you what has

13:23:41 11 been marked as Exhibit A -- 8. I'm sorry.

13:23:41 12 A. It's okay.

13:23:51 13 Q. Do you recognize this document?

13:23:56 14 A. No.

13:23:57 15 Q. Okay. Do you see where individuals

13:24:06 16 listed as Slamba, Buyers, Pinkston, and Borsaleri,

13:24:14 17 do you see where that section is? It's in the

13:24:17 18 middle, in the very middle of the page.

13:24:24 19 A. Yes.

13:24:24 20 Q. Okay. Do you know a Joseph Slamba?

13:24:28 21 A. No.

13:24:29 22 Q. Okay. Do you know a Joseph Buyers?

13:24:31 23 A. As I said before, the name is familiar,

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13:24:34 1 but I'm not certain who that is.

13:24:36 2 Q. Okay. Do you know an individual
13:24:41 3 cellblock attendant named Pinkston?

13:24:45 4 A. No.

13:24:46 5 Q. Do you know an individual cellblock
13:24:48 6 attendant with the last name of Borsaleri?

13:24:51 7 A. No.

13:24:51 8 Q. Okay. So I'm going to show you what's
13:25:04 9 been marked as Exhibit 21. Do you recognize that
13:25:11 10 document?

13:25:11 11 A. Yes.

13:25:12 12 Q. And what do you recognize it to be?

13:25:14 13 A. An -- an appearance ticket.

13:25:15 14 Q. Okay. So do you see the time that's
13:25:23 15 listed as 1600 with PM circled?

13:25:28 16 A. Yes.

13:25:28 17 Q. Okay. And that would be referring to
13:25:32 18 4:00 p.m., correct?

13:25:33 19 A. Yes.

13:25:50 20 Q. So turning back to Exhibit 4A.

13:25:55 21 A. What's 4A?

13:25:58 22 Q. So that one, yes, okay. Do you see
13:26:04 23 where the location change for ECMC was made at

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13:26:10 1 4:36:51 towards the bottom of the page?

13:26:15 2 A. Yes.

13:26:15 3 Q. And 4:36:55 for you?

13:26:18 4 A. Yes.

13:26:18 5 Q. Okay. So now -- oh, excuse me. So

13:26:29 6 turning back towards Exhibit 21, when it says

13:26:33 7 1600 p.m., before that it says committed at 37

13:26:40 8 Schmarbeck on the 1st day of January of 2017 and

13:26:44 9 then it says at 4:00 p.m.; do you see that?

13:26:47 10 A. Yes.

13:26:48 11 Q. Okay. All right. So is that in
13:26:51 12 reference to what time the crime was committed?

13:26:56 13 A. I'm not certain why they put 1600 on
13:27:00 14 there.

13:27:00 15 Q. Okay. Would you or Ms. McDermott have
13:27:03 16 given that information to whoever issued the
13:27:06 17 appearance ticket?

13:27:07 18 MS. HUGGINS: Form.

13:27:07 19 THE WITNESS: I'm not certain who would have
13:27:10 20 given that information.

13:27:10 21 BY MR. DAVENPORT:

13:27:11 22 Q. Okay. Do you believe that the time is
13:27:15 23 incorrect at 1600 p.m. for when the crime was

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13:27:20 1 committed?

13:27:20 2 A. Yes.

13:27:20 3 Q. Okay. Now, it looks like the issuing
13:27:27 4 officer for the appearance ticket was Lieutenant D.
13:27:32 5 Banazek; do you see that?

13:27:37 6 A. I see where the issuing officer is,
13:27:39 7 that's not legible.

13:27:42 8 Q. Okay. Do you know an individual by the
13:27:44 9 name of Lieutenant Banazek?

13:27:46 10 A. Yes.

13:27:47 11 Q. Okay. And who is that?

13:27:49 12 A. Lieutenant Banazek was the lieutenant
13:27:53 13 from -- that was working in central booking.

13:27:56 14 Q. Okay. Did he have any other
13:27:58 15 assignments besides central booking at that time?

13:28:01 16 A. I -- I don't know.

13:28:03 17 Q. Have you ever spoken to Lieutenant
13:28:06 18 Banazek before?

13:28:06 19 A. Yes.

13:28:07 20 Q. Okay. And in what situations have you
13:28:12 21 spoken to Lieutenant Banazek?

13:28:14 22 A. While he was down in central booking if
13:28:17 23 we had questions regarding -- if I had questions

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13:28:20 1 regarding paperwork or anything of that nature with
13:28:23 2 the booking process, I would defer to him, because
13:28:26 3 he was a lieutenant.

13:28:27 4 Q. What sorts of issues would you have
13:28:29 5 with paperwork, would it be penal statutes or, you
13:28:34 6 know, I guess, what sorts of questions would you
13:28:36 7 ask of this lieutenant at central booking?

13:28:39 8 A. It depends. It could vary, it could be
13:28:40 9 paperwork, it could be a situation, correct
13:28:43 10 charges.

13:28:43 11 Q. Okay. What other sorts of paperwork
13:28:47 12 would you typically fill out at central booking?

13:28:51 13 A. We just turn in our 163, the report
13:28:55 14 technicians complete the documentation for us.

13:28:59 15 Q. And, I'm sorry, what does a 163 refer
13:29:02 16 to?

13:29:03 17 A. The arrest form.

13:29:05 18 Q. Okay. Do you give that 163 arrest form
13:29:16 19 to central booking after it's completed?

13:29:19 20 A. Yes.

13:29:19 21 Q. Okay. And then do you know who central
13:29:23 22 booking takes that arrest form to?

13:29:25 23 A. As I explained, when we come in for the

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13:29:28 1 arrest process, we give it to the -- at the window.
13:29:30 2 And then that report technician makes a copy, gives
13:29:34 3 us the copy so we can complete the booking process
13:29:37 4 with the prisoner.

13:29:38 5 And then a second copy goes back to the
13:29:40 6 report technicians who complete our court
13:29:43 7 documentation, our complaints, the rest of the
13:29:45 8 forms that need to be completed for the court file.

13:29:47 9 Q. Okay. After those forms are completed,
13:29:50 10 would the arresting officer sign off on those
13:29:53 11 criminal complaint documents?

13:29:55 12 A. If they're the complainant on it, if
13:29:58 13 the State of New York is the complainant on it, if
13:30:00 14 we're the complainant on it, then yes.

13:30:01 15 Q. Okay. If an individual who is not a
13:30:04 16 police officer is the complainant, they would sign
13:30:06 17 off on the arrest forms or criminal complaint
13:30:07 18 forms?

13:30:07 19 A. If they were present, if they came down
13:30:09 20 to central booking, they can sign. At one time we
13:30:12 21 could sign on information and belief, so we would
13:30:13 22 sign on -- on behalf of them if they gave us a
13:30:17 23 supporting deposition that said we want to be a

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13:30:19 1 complaint, they're just not present. So those are
13:30:22 2 the times we would sign. I'm sorry.

13:30:25 3 Q. Okay. Now, do you see underneath zip
13:30:40 4 code on the appearance ticket where it says
13:30:43 5 records? It's directly above part two that's
13:30:48 6 underlined and bolded; do you see that?

13:30:49 7 A. Yes.

13:30:50 8 Q. What is that referring to?

13:30:54 9 A. What part of it are you referring to
13:30:58 10 that is referring to?

13:30:59 11 Q. Well, there's records that is written
13:31:02 12 underneath zip code and directly above part two
13:31:06 13 which is underlined and bolded. Do you know why
13:31:10 14 records would be written in that section?

13:31:13 15 A. I did not create this document. I -- I
13:31:16 16 don't know.

13:31:16 17 Q. Okay. Now, you were a passenger with
13:31:48 18 Ms. McDermott on January 1st of 2017, correct?

13:31:51 19 A. Yes.

13:31:52 20 Q. Were you a passenger at the time that
13:31:55 21 the car and Mr. Kistner collided with each other?

13:31:59 22 MS. HUGGINS: Form. You may answer.

13:32:00 23 THE WITNESS: I was in the passenger's side

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13:32:02 1 during the incident.

13:32:03 2 BY MR. DAVENPORT:

13:32:03 3 Q. Okay. Did you see that incident?

13:32:05 4 A. I did not.

13:32:06 5 Q. Okay. So you didn't see the car make

13:32:11 6 contact with Mr. Kistner?

13:32:11 7 MS. HUGGINS: Form. You may answer.

13:32:13 8 THE WITNESS: I did not see Mr. Kistner make

13:32:16 9 contact with the car.

13:32:16 10 THE REPORTER: I'm sorry?

13:32:16 11 THE WITNESS: I did not see Mr. Kistner make

13:32:18 12 contact with the car.

13:32:18 13 BY MR. DAVENPORT:

13:32:18 14 Q. Did Ms. McDermott tell you that she saw

13:32:21 15 the incident, the collision with Mr. Kistner in the

13:32:25 16 vehicle?

13:32:25 17 A. She did.

13:32:26 18 Q. Okay. And what did she tell you?

13:32:29 19 A. She told me that Mr. Kistner had -- I

13:32:32 20 can't remember if she said threw himself or put

13:32:35 21 himself into the mirror of the car.

13:32:38 22 Q. Okay. Did you happen to observe what

13:32:41 23 the mirror looked like on the driver's side of that

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13:32:45 1 vehicle after the collision?

13:32:46 2 A. I did.

13:32:46 3 Q. Okay. And how did it appear to you?

13:32:48 4 A. That it was dislodged from the body of
13:32:51 5 the car.

13:32:52 6 Q. Now, when you say dislodged, was it
13:32:55 7 still attached but it was partially detached from
13:32:59 8 the car?

13:32:59 9 A. Yes.

13:32:59 10 Q. Okay. So it -- it was still there on
13:33:03 11 the car, it hadn't fallen off completely, correct?

13:33:07 12 A. Correct.

13:33:07 13 Q. Okay. Was there any damage to the
13:33:09 14 glass on that mirror?

13:33:12 15 A. The glass itself was not damaged.

13:33:16 16 Q. Okay. Did you try to use or did
13:33:24 17 Ms. McDermott try to use the window on the driver's
13:33:27 18 side of that vehicle that day?

13:33:29 19 A. She did.

13:33:29 20 Q. Okay. Were you present when she tried
13:33:32 21 to use the window?

13:33:33 22 A. Yes.

13:33:33 23 Q. Okay. Did it make any sort of a

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13:33:37 1 screeching sound or anything like that?

13:33:40 2 A. It did, it -- it made a noise and it
13:33:42 3 like wiggled and hesitated to go up and down.

13:33:45 4 Q. Okay. What car were you driving that
13:33:47 5 day?

13:33:47 6 A. I wasn't driving that day.

13:33:49 7 Q. Excuse me. What car were you a
13:33:51 8 passenger in that day?

13:33:53 9 A. I believe it was 473.

13:33:55 10 Q. Okay. Did you and Ms. McDermott have a
13:33:57 11 specific vehicle that you liked to use?

13:34:00 12 A. She had -- she preferred 473. I
13:34:05 13 preferred 472.

13:34:06 14 Q. Okay. Was there any reason why car 473
13:34:11 15 was used on the day of the incident?

13:34:14 16 A. Availability.

13:34:14 17 Q. Okay. Did you use car 473 again after
13:34:18 18 January 1st of 2017?

13:34:19 19 A. I'm sure we did. If Officer McDermott
13:34:22 20 was driving, she -- she would drive that car.

13:34:25 21 Q. Okay. Do you recall when your next
13:34:27 22 shift would have been after January 1st of 2017?

13:34:29 23 A. I don't recall.

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13:34:31 1 Q. Okay. Would it have been before
13:34:36 2 January 5th of 2017?

13:34:40 3 A. It would have. Well, if January 1 was
13:34:44 4 our last day, the most we could have been off was
13:34:48 5 for four days, so then we would have been back.

13:34:51 6 So if -- if January 1 was our last day,
13:34:55 7 because I don't recall, we would have been -- the
13:34:55 8 most we -- the longest we could have been off was
13:34:56 9 the 2nd, 3rd, 4th, 5th.

13:35:00 10 So the earliest would have been January 6th
13:35:03 11 or 5th, if we were off for three.

13:35:06 12 Q. Okay. Do you know when the next time
13:35:08 13 would have been that you would use car 473?

13:35:11 14 A. No.

13:35:11 15 Q. Okay. Do you recall if the next time
13:35:13 16 that you used car 473 did it have a dislodged
13:35:17 17 mirror or were there any issues with the driver's
13:35:20 18 side window?

13:35:20 19 A. I don't recall.

13:35:21 20 Q. Okay. Do you recall ever driving the
13:35:23 21 vehicle again where it had a dislodged mirror or
13:35:27 22 issues with the driver's side window?

13:35:28 23 A. I don't recall driving 473 at all.

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13:35:31 1 Like I said, I would prefer to drive 472, but I
13:35:35 2 don't recall being in that vehicle in -- with an
13:35:39 3 issue.

13:35:39 4 Like I don't recall after that incident when
13:35:41 5 was the next time we had taken that vehicle. I
13:35:44 6 don't recall.

13:35:44 7 Q. Do you recall ever being in a police
13:35:47 8 vehicle where the driver's side mirror was
13:35:50 9 dislodged or the driver's side window had issues
13:35:53 10 with going up and down?

13:35:55 11 MS. HUGGINS: Form. You can answer.

13:35:57 12 THE WITNESS: I've driven vehicles that have
13:35:59 13 had issues with windows before.

13:36:02 14 BY MR. DAVENPORT:

13:36:02 15 Q. And what sort of issues were those?

13:36:05 16 A. I had one that the window wouldn't go
13:36:08 17 down before.

13:36:09 18 Q. But you were never in a vehicle where
13:36:13 19 the window would make noises as it was going down,
13:36:17 20 correct?

13:36:17 21 A. Correct.

13:36:17 22 Q. Okay. Do you recall what car you were
13:36:19 23 driving when the window would not go down?

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13:36:24 1 A. It may have been a Crown Vic, a Crown
13:36:28 2 Victoria, the old model car we had, because we had
13:36:31 3 some that were very old.

13:36:33 4 Q. Okay. Now, on the day of the incident
13:36:36 5 did you make any sort of an estimation as to how
13:36:40 6 much damage was caused to car 473 by this incident?

13:36:44 7 A. I did not.

13:36:45 8 Q. Okay. Would you agree or disagree that
13:36:47 9 it was more than \$250 worth of damage to the
13:36:50 10 vehicle?

13:36:51 11 MS. HUGGINS: Form. You can answer.

13:36:52 12 THE WITNESS: I'm not a professional, I -- I
13:36:54 13 would not know.

13:36:55 14 BY MR. DAVENPORT:

13:36:55 15 Q. On the day of the incident did you
13:36:57 16 believe is that it was more than \$250 worth of
13:37:01 17 damage to the vehicle?

13:37:02 18 A. Based on the information that was given
13:37:04 19 to me by Officer McDermott on the damage and the
13:37:08 20 charges that she signed on, yes.

13:37:10 21 Q. But that wasn't based off of your
13:37:12 22 personal observation of the damage to the vehicle?

13:37:14 23 A. I can't estimate that. I don't know

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13:37:17 1 how much that would cost.

13:37:18 2 Q. Do you know if Ms. McDermott can make
13:37:21 3 that estimation?

13:37:21 4 A. You would have to ask Officer
13:37:21 5 McDermott.

13:37:21 6 Q. Is she trained on how to make those
13:37:25 7 estimations?

13:37:25 8 A. You would have to ask Officer
13:37:25 9 McDermott.

13:37:28 10 Q. Are you trained on how to make those
13:37:29 11 estimations?

13:37:29 12 A. I am not.

13:37:30 13 Q. Okay. Are any police officers trained
13:37:32 14 on how to make those estimations?

13:37:35 15 A. I don't know.

13:37:36 16 Q. Okay. I'm going to show you what's
13:37:37 17 been marked as Exhibit 18. Do you recognize this
13:37:45 18 document?

13:37:48 19 A. I've -- no, I haven't seen one of
13:37:51 20 these.

13:37:53 21 Q. Do you see where it's written
13:37:56 22 underneath fleet management what is written?

13:37:58 23 A. Yes.

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13:37:59 1 Q. What's written?

13:38:00 2 A. Maintenance work order.

13:38:02 3 Q. Okay. Do you have any reason to
13:38:04 4 dispute that this is a maintenance work order?

13:38:06 5 A. No.

13:38:07 6 Q. Do you have any reason to dispute that
13:38:10 7 this is a maintenance work order that was made and
13:38:12 8 created by the City of Buffalo?

13:38:14 9 MS. HUGGINS: Form.

13:38:14 10 THE WITNESS: It has a seal on it, no.
13:38:17 11 Again, no.

13:38:18 12 BY MR. DAVENPORT:

13:38:18 13 Q. Okay. Now, looking at this for the
13:38:24 14 vehicle information, what car was fixed according
13:38:27 15 to this maintenance work order?

13:38:30 16 A. This has unit 473 on it.

13:38:33 17 Q. Okay. And what was the date of
13:38:36 18 service?

13:38:37 19 A. 1/5 of '17.

13:38:39 20 Q. Okay. And on the day of the incident
13:38:42 21 you and Ms. McDermott were driving car 473,
13:38:46 22 correct?

13:38:46 23 A. Officer McDermott was driving. I was

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13:38:48 1 in the passenger's side, yes.

13:38:50 2 Q. But you and Officer McDermott were in
13:38:52 3 car 473?

13:38:54 4 A. On January 1st, 2017, yes.

13:38:56 5 Q. Okay. And this is also the car that
13:38:59 6 Ms. McDermott alleged in her criminal complaint
13:39:02 7 that Mr. Kistner caused more than \$250 worth of
13:39:07 8 damage to?

13:39:07 9 A. Yes.

13:39:09 10 Q. By intentionally throwing himself at
13:39:12 11 the police vehicle?

13:39:12 12 A. Yes.

13:39:13 13 Q. Okay. Do you see where it says service
13:39:15 14 underneath the service date?

13:39:16 15 A. Yes.

13:39:16 16 Q. And what does that say?

13:39:18 17 A. Cooling system.

13:39:19 18 Q. Does that in any way refer to the
13:39:22 19 mirror on the driver's side or the window on the
13:39:26 20 driver's side of car 473?

13:39:27 21 MS. HUGGINS: Form.

13:39:27 22 THE WITNESS: I have no idea what a cooling
13:39:29 23 system is. There's no word window there, no mirror

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13:39:35 1 there.

13:39:35 2 BY MR. DAVENPORT:

13:39:36 3 Q. But you have no reason to believe that
13:39:38 4 that would refer to the window on the driver's side
13:39:40 5 of the vehicle or the window on the driver's side,
13:39:43 6 correct?

13:39:43 7 MS. HUGGINS: Form.

13:39:43 8 THE WITNESS: Again, I'm not a vehicle
13:39:45 9 maintenance worker and this says cooling system.

13:39:47 10 BY MR. DAVENPORT:

13:39:48 11 Q. Okay. Now, do you see where it says
13:39:50 12 remarks are, slash are water pump, and then serp
13:39:56 13 period belt; do you see that?

13:39:57 14 A. Yes.

13:39:58 15 Q. Now, does that in any way refer to the
13:40:03 16 driver's side mirror or the driver's side window?

13:40:06 17 MS. HUGGINS: Form. You can answer.

13:40:09 18 THE WITNESS: It doesn't say window or
13:40:11 19 mirror here, but it says water pump. And I don't
13:40:14 20 know what a serp belt is or what RR means.

13:40:18 21 BY MR. DAVENPORT:

13:40:18 22 Q. Do you see where it's listed as cost
13:40:21 23 underneath the service information?

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13:40:23 1 A. Yes.

13:40:24 2 Q. And do you see where that is listed as
13:40:26 3 blank?

13:40:27 4 A. Yes.

13:40:27 5 Q. So is it fair to say that no estimate
13:40:30 6 was ever made by the City of Buffalo as to the cost
13:40:33 7 of the damage caused by Mr. Kistner on January 1st
13:40:37 8 of 2017?

13:40:37 9 MS. HUGGINS: Form.

13:40:37 10 THE WITNESS: I don't know if an estimate
13:40:39 11 was ever done.

13:40:40 12 BY MR. DAVENPORT:

13:40:41 13 Q. Now, as part of the burden of proof for
13:40:46 14 a criminal complaint, that's beyond a reasonable
13:40:49 15 doubt, correct?

13:40:49 16 MS. HUGGINS: Form.

13:40:50 17 THE WITNESS: For a criminal complaint?

13:40:52 18 BY MR. DAVENPORT:

13:40:53 19 Q. Yes.

13:40:53 20 A. Yes.

13:40:54 21 Q. Okay. What sorts of evidence would you
13:40:57 22 use to accuse somebody of causing \$250 worth of
13:41:01 23 damage to a vehicle?

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13:41:02 1 MS. HUGGINS: Form.

13:41:03 2 THE WITNESS: Well, we have at the time
13:41:05 3 probable cause to make the arrest. Following
13:41:09 4 the -- the District Attorney's office, we would
13:41:12 5 follow -- we would conference with them to
13:41:14 6 determine what documents would be needed.

13:41:16 7 BY MR. DAVENPORT:

13:41:18 8 Q. At any time did the District Attorney
13:41:19 9 tell you what sort of documents were needed in
13:41:22 10 order to sustain a beyond a reasonable doubt
13:41:25 11 standard?

13:41:26 12 A. I don't recall ever meeting with the
13:41:29 13 District Attorney.

13:41:29 14 Q. Do you recall ever speaking with
13:41:29 15 Ms. McDermott to know if she ever met with the
13:41:31 16 District Attorney?

13:41:31 17 A. No.

13:41:34 18 Q. Were you or Ms. McDermott ever present
13:41:38 19 for any of the criminal proceedings against
13:41:40 20 Mr. Kistner?

13:41:41 21 A. I don't recall being present. I don't
13:41:43 22 know if Officer McDermott was.

13:41:48 23 Q. Now, looking at this information, do

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13:41:59 1 you recall if car 473 had any issues with the
13:42:03 2 cooling system prior to January 5th of 2017?

13:42:08 3 A. I don't recall.

13:42:08 4 Q. Okay. Did it have any issues with the
13:42:11 5 cooling system on January 1st of 2017?

13:42:14 6 A. I don't recall.

13:42:15 7 Q. Do you know what the cooling system
13:42:17 8 refers to?

13:42:17 9 A. I don't.

13:42:18 10 Q. Okay. Now, as a lieutenant, are you
13:42:26 11 involved at all in the repair and maintenance of
13:42:28 12 the vehicles in your fleet?

13:42:31 13 A. Involved in the repair and maintenance,
13:42:33 14 no.

13:42:33 15 Q. Are you involved in the status of the
13:42:36 16 repair of those vehicles in your fleet?

13:42:38 17 A. As a lieutenant, I follow up, because
13:42:41 18 we have such a shortage of cars. So the extent of
13:42:46 19 my follow-up is to find out when they're going to
13:42:49 20 be available again for service.

13:42:51 21 Q. Okay. If a police officer came to you
13:42:53 22 and told you that the window was malfunctioned and
13:42:57 23 the mirror was dislodged from a police vehicle,

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13:43:01 1 would you have that police officer send it in for
13:43:03 2 service?

13:43:04 3 A. It's situational.

13:43:05 4 Q. Would you have a police officer drive a
13:43:08 5 police vehicle if a mirror was dislodged from that
13:43:12 6 vehicle?

13:43:12 7 A. They -- it depends on the type of
13:43:16 8 damage that's done to it, is it functional.

13:43:20 9 Q. What sorts of mirrors that are
13:43:23 10 dislodged from a police vehicle are still
13:43:26 11 functional?

13:43:26 12 A. If it --

13:43:26 13 MS. HUGGINS: Form. You can answer.

13:43:28 14 THE WITNESS: If the mirror is still
13:43:30 15 attached and you can see out the mirror. But as I
13:43:33 16 said before, we have such a shortage of vehicles or
13:43:36 17 even if the vehicle has to be driven down to the
13:43:39 18 garage for a repair, if they can safely get there
13:43:39 19 and the mirror is functional and can serve its
13:43:42 20 purpose even though it's broken, they can still
13:43:44 21 operate it.

13:43:45 22 BY MR. DAVENPORT:

13:43:45 23 Q. So besides driving that vehicle to the

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13:43:48 1 service garage, you would allow that officer to go
13:43:53 2 out on patrol with a dislodged mirror?

13:43:53 3 A. Again, it's situational. If the mirror
13:43:55 4 is functional, it could be dislodged, it could even
13:43:56 5 be broken and still functioning.

13:43:59 6 Q. Just so that I'm clear, what does
13:44:01 7 dislodged mean to you?

13:44:03 8 A. That it's off track or broken off of
13:44:06 9 where it should be completely attached.

13:44:09 10 Q. So does dislodged mean that -- well, in
13:44:15 11 specific to this mirror on car 473 on January 1st
13:44:19 12 of 2017, was it dislodged where it was angled
13:44:22 13 downward or upward or was it dislodged where it was
13:44:25 14 angled towards the car or away from the car?

13:44:28 15 MS. HUGGINS: Form.

13:44:29 16 THE WITNESS: I don't recall.

13:44:29 17 BY MR. DAVENPORT:

13:44:29 18 Q. Okay. Assuming that this mirror was
13:44:35 19 dislodged, would you agree that the view that a
13:44:41 20 driver would have out of that driver's side mirror
13:44:44 21 would be distorted?

13:44:46 22 A. Depending --

13:44:46 23 MS. HUGGINS: Form. You can answer.

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13:44:48 1 THE WITNESS: It's depending on the way it
13:44:50 2 was dislodged, depending on how it was or as you
13:44:53 3 had described which angle it was at.

13:44:53 4 BY MR. DAVENPORT:

13:44:53 5 Q. Would --

13:44:55 6 A. Like I said, it could be dislodged and
13:44:58 7 still functioning.

13:44:59 8 Q. Would any of the angles that I
13:45:02 9 discussed have a mirror that's dislodged where the
13:45:05 10 view would not be distorted for the driver?

13:45:08 11 MS. HUGGINS: Form.

13:45:09 12 THE WITNESS: It depends.

13:45:15 13 BY MR. DAVENPORT:

13:45:16 14 Q. Assuming that a police officer has
13:45:20 15 reported to you that their mirror is dislodged on
13:45:23 16 their police vehicle, how long would you allow that
13:45:27 17 police officer to drive with a dislodged mirror?

13:45:29 18 MS. HUGGINS: Form. You can answer.

13:45:31 19 THE WITNESS: If the garage is open, I would
13:45:33 20 prefer the vehicle be taken immediately down and
13:45:36 21 let's get this vehicle fixed in a reasonable amount
13:45:37 22 of time.

13:45:37 23 BY MR. DAVENPORT:

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13:45:39 1 Q. When is the garage not open?

13:45:41 2 A. Holidays, weekends, occasionally now
13:45:45 3 because we have such a shortage of vehicle, they
13:45:50 4 can be open on a Saturday, but typically regular
13:45:50 5 business hours Monday through Friday.

13:45:52 6 Q. And regular business hours would refer
13:45:54 7 to 9:00 a.m. to 5:00 p.m.?

13:45:56 8 A. Sometimes it's earlier. I believe
13:45:58 9 sometimes the garage opens at 7, maybe 7, and I
13:46:02 10 don't recall how late they stay.

13:46:04 11 Q. Okay. Was there any reason to believe
13:46:07 12 that the garage was closed prior to January 5th of
13:46:11 13 2017 and after January 1st of 2017?

13:46:14 14 MS. HUGGINS: Form. You can answer.

13:46:15 15 THE WITNESS: I don't know.

13:46:27 16 BY MR. DAVENPORT:

13:46:27 17 Q. So I'm going to show you what has been
13:46:31 18 marked as Exhibit 17. Do you recognize that
13:46:36 19 document?

13:46:36 20 A. Yes.

13:46:37 21 Q. Okay. And what do you recognize it to
13:46:40 22 be?

13:46:40 23 A. Information and complaint.

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13:46:42 1 Q. Okay. Who was the criminal complainant
13:46:50 2 for this criminal complaint?

13:46:52 3 A. Can you repeat that?

13:46:54 4 Q. Who was the complainant for this
13:46:57 5 criminal complaint?

13:46:58 6 A. Officer McDermott.

13:46:59 7 Q. And why would she have been the
13:47:03 8 complainant for this criminal complaint?

13:47:05 9 A. She was the officer who was signing on
13:47:07 10 the charges.

13:47:08 11 Q. Would you expect that the officer
13:47:10 12 driving the vehicle would be the criminal
13:47:13 13 complainant in a situation that transpired on
13:47:17 14 January 1st of 2017?

13:47:18 15 A. The officer who had witnessed it. She
13:47:23 16 had witnessed it, so she signed on the charges.

13:47:26 17 Q. Okay. Now, reading underneath criminal
13:47:33 18 mischief, damages greater than \$250, that's
13:47:38 19 referring to damages to the police vehicle car 473,
13:47:44 20 correct?

13:47:44 21 MS. HUGGINS: Form.

13:47:49 22 THE WITNESS: Yes.

13:47:49 23 BY MR. DAVENPORT:

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13:47:50 1 Q. Okay. And would it be safe to say that
13:47:57 2 that was -- strike that.

13:48:00 3 Let's look underneath criminal mischief in
13:48:06 4 the third degree in the middle of the page. Do you
13:48:09 5 see that? It's right underneath -- right after
13:48:12 6 145.05-2.

13:48:15 7 A. Yes.

13:48:15 8 Q. Okay. So reading that first sentence,
13:48:18 9 in that the defendant while at 37 Schmarbeck did
13:48:23 10 with intent to damage the property of another
13:48:26 11 person, City of Buffalo's Police Department, and
13:48:29 12 having no right to do so nor any reasonable ground
13:48:34 13 to believe that he had such right did damage the
13:48:37 14 property.

13:48:38 15 Now, turning to that first line where it
13:48:43 16 says intent to damage, do you agree based off of
13:48:47 17 what you have now seen on the video surveillance
13:48:51 18 that was provided to you that Mr. Kistner intended
13:48:54 19 to damage the police vehicle?

13:48:56 20 MS. HUGGINS: Form.

13:48:57 21 THE WITNESS: Yes.

13:48:57 22 BY MR. DAVENPORT:

13:48:57 23 Q. Okay. And just so that way I'm clear

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13:49:01 1 that's based on what you saw on the video, correct?

13:49:05 2 MS. HUGGINS: Form.

13:49:05 3 THE WITNESS: Again, I had two officers

13:49:07 4 describe to me and the video. And based on that,

13:49:11 5 yes.

13:49:11 6 BY MR. DAVENPORT:

13:49:12 7 Q. Well, I'm just asking specifically what

13:49:14 8 you saw on the video you still believe that

13:49:17 9 Mr. Kistner intended to damage the vehicle?

13:49:18 10 A. Well, from --

13:49:18 11 MS. HUGGINS: Form.

13:49:20 12 THE WITNESS: -- the perspective of the

13:49:21 13 video it's very hard to see in my -- my view.

13:49:25 14 BY MR. DAVENPORT:

13:49:25 15 Q. So it's hard to see, but based on what

13:49:28 16 you saw in the -- in the video, do you believe that

13:49:31 17 Mr. Kistner intended to damage the vehicle?

13:49:33 18 A. I believe Mr. --

13:49:34 19 MS. HUGGINS: Form. Are you asking her

13:49:37 20 opinion of -- of the video?

13:49:37 21 MR. DAVENPORT: Yes.

13:49:38 22 MS. HUGGINS: -- after viewing it?

13:49:40 23 Form. You can answer.

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13:49:41 1 THE WITNESS: Like I said, that perspective
13:49:44 2 of the video and from what I can see it's the
13:49:47 3 angle -- it's a difficult angle to see the
13:49:51 4 circumstance, but I believe, yes.

13:49:52 5 BY MR. DAVENPORT:

13:49:52 6 Q. And that's based on what you saw in the
13:49:54 7 video, correct?

13:49:55 8 A. Yes.

13:49:55 9 MS. HUGGINS: Form.

13:49:57 10 MR. DAVENPORT: Thank you.

13:50:00 11 I'm sorry. Can we take a break really
13:50:03 12 quick.

13:50:03 13 (Discussion off the record at
13:50:03 14 1550.)

14:00:28 15 (On the record at 1400.)

14:00:28 16 BY MR. DAVENPORT:

14:00:32 17 Q. So now, Ms. Velez, turning your
14:00:35 18 attention again to Exhibit 17. It says on here
14:00:40 19 that in that the defendant did intentionally throw
14:00:44 20 his body into the driver's side mirror of patrol
14:00:48 21 vehicle under 473 causing the mirror to become
14:00:54 22 dislodged from the vehicle and also causing
14:00:55 23 the -- the defendant -- or also causing the

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14:00:57 1 driver's side window to malfunction; do you see
14:01:00 2 that?

14:01:00 3 A. Yes.

14:01:00 4 Q. Now, the driver's side window
14:01:02 5 malfunctioning, what do you recall about the
14:01:06 6 driver's side window malfunctioning?

14:01:08 7 A. I recall -- I don't exactly remember at
14:01:12 8 what point during the process of transporting
14:01:17 9 Mr. Kistner when Officer McDermott went to roll her
14:01:20 10 window down.

14:01:21 11 I recall her trying to roll her window down
14:01:23 12 and, like I said, it made a noise and then it was
14:01:26 13 like hesitating to go down and up.

14:01:29 14 Q. Okay. Do you recall, would that have
14:01:32 15 been attempted at Schmarbeck?

14:01:34 16 A. I don't recall if it was. I know we
14:01:40 17 had -- I don't recall if it was when exactly we
14:01:43 18 were leaving Schmarbeck or to ECMC.

14:01:50 19 Q. So when the incident initially happens,
14:01:55 20 the only information that you knew or that any of
14:02:00 21 the officers knew about damage to the vehicle
14:02:03 22 number 473 was that the mirror, driver's side
14:02:06 23 mirror was dislodged from the vehicle?

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14:02:07 1 MS. HUGGINS: Form. You may answer.

14:02:09 2 THE WITNESS: Pardon?

14:02:10 3 BY MR. DAVENPORT:

14:02:10 4 Q. When the incident initially happens,
14:02:13 5 the only damage that you or any of the officers at
14:02:19 6 the scene knew was that the mirror was dislodged
14:02:23 7 from vehicle number 473?

14:02:25 8 A. Correct.

14:02:25 9 Q. Okay. Now, on the second page of
14:02:28 10 Exhibit 17, was that criminal charge for disorderly
14:02:37 11 conduct?

14:02:37 12 A. Yes, the violation disorderly conduct.

14:02:41 13 Q. Okay. So it's a violation. Now, is
14:02:44 14 there any reason to include what the value of the
14:02:48 15 damage to the vehicle was in that criminal
14:02:52 16 complaint where it says the value of said damage to
14:02:52 17 exceed \$250?

14:02:55 18 A. This -- these are created by the report
14:02:59 19 technicians, so that could have just been part of
14:03:03 20 she's doing page 1, page 2. I'm not certain.

14:03:08 21 Q. Okay. For the disorderly conduct, what
14:03:12 22 was that criminal charge for? What -- what sort of
14:03:16 23 criminal conduct did Mr. Kistner do to deserve that

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14:03:16 1 criminal charge?

14:03:17 2 MS. HUGGINS: Form. You may answer.

14:03:20 3 THE WITNESS: From what I recall, this
14:03:21 4 was -- the disorderly conduct was for his behavior
14:03:24 5 at the hospital, the disruption that he created.

14:03:27 6 BY MR. DAVENPORT:

14:03:28 7 Q. Was any part of this criminal charge
14:03:31 8 due to any of the damage that Mr. Kistner caused to
14:03:35 9 the police vehicle number 473?

14:03:38 10 A. Not that I could recall. Again,
14:03:42 11 Officer McDermott signed on these charges, so --

14:03:44 12 Q. Sure. Have you ever charged somebody
14:03:47 13 with disorderly conduct, the violation section
14:03:51 14 24020, subsection three of the Penal Law of the
14:03:56 15 State of New York?

14:03:56 16 A. Ever?

14:03:57 17 Q. Yes.

14:03:58 18 A. I don't recall specifics.

14:03:58 19 Q. Okay.

14:04:00 20 A. I may have.

14:04:01 21 Q. Okay. Are you familiar with that
14:04:03 22 statute?

14:04:04 23 A. Yes.

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14:04:04 1 Q. Okay. If somebody intentionally threw
14:04:09 2 themselves at a police vehicle, would that be
14:04:13 3 conduct that would warrant a disorderly conduct
14:04:17 4 charge under this subsection?

14:04:20 5 A. On a patrol car?

14:04:23 6 Q. Yes.

14:04:24 7 A. It depends. Like it's -- it's
14:04:28 8 circumstantial. It depends on the totality of
14:04:30 9 where they are, how it happened, why they did it.

14:04:33 10 Q. So it's possible, then?

14:04:35 11 A. Possible.

14:04:36 12 Q. Okay. I'm going to show you what's
14:04:48 13 been marked as Exhibit 5. Do you recognize this
14:04:54 14 document?

14:04:54 15 A. I do.

14:04:55 16 Q. And what do you recognize it to be?

14:04:57 17 A. This is a police report.

14:04:59 18 Q. Okay. Is this referred to any -- by
14:05:03 19 any other names or identifications?

14:05:06 20 A. Yes, a P1375.

14:05:09 21 Q. Okay. Now, when would this P1375
14:05:16 22 report have been filled out?

14:05:20 23 A. It could have been filled out -- I

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14:05:23 1 don't know exactly when it was filled out, but it
14:05:26 2 would typically be done either during the booking
14:05:33 3 process.

14:05:33 4 While the RTs are completing their
14:05:33 5 paperwork, we could possibly fill out, because
14:05:35 6 there's a long form that goes with the -- the paper
14:05:38 7 version. We would -- we can fill that out or
14:05:44 8 when -- if there's two officers while transporting,
14:05:46 9 we can do the paperwork.

14:05:48 10 Or upon completion of the arrest or the
14:05:51 11 disposition of whatever it was we can complete it
14:05:54 12 after.

14:05:54 13 Q. When Mr. Kistner was at central
14:05:58 14 booking, did you know where he would be going next?

14:06:02 15 A. Yes.

14:06:02 16 Q. Where did you know that he was going
14:06:04 17 to?

14:06:04 18 A. To ECMC.

14:06:07 19 Q. At any point, did you and Ms. McDermott
14:06:12 20 discuss sending Mr. Kistner to jail as opposed to
14:06:17 21 ECMC?

14:06:17 22 A. At central booking, I don't recall.
14:06:20 23 No, once we went to central booking, we knew that

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14:06:25 1 he was going to go back at that point.

14:06:26 2 Q. Okay. So that would have been when you
14:06:29 3 arrived at central booking that you knew that he
14:06:33 4 was going to ECMC?

14:06:33 5 A. Correct, we had already knew.

14:06:33 6 Q. Okay. Was that information conveyed to
14:06:36 7 any of the cellblock attendants?

14:06:38 8 A. I don't recall.

14:06:39 9 Q. Is it part of their job to ask where
14:06:42 10 that individual would be going next?

14:06:44 11 A. They would have known, I believe, that
14:06:45 12 he was going to get an appearance ticket, but they
14:06:46 13 do their own checklist evaluation.

14:06:49 14 So I don't -- I don't know that we told them
14:06:54 15 that he was going to ECMC afterward. I don't
14:06:57 16 recall.

14:06:57 17 Q. Okay. At what point do they ask you if
14:07:01 18 an individual is being given an appearance ticket?

14:07:04 19 MS. HUGGINS: Cellblock attendants?

14:07:04 20 BY MR. DAVENPORT:

14:07:04 21 Q. Cellblock attendants.

14:07:08 22 A. I don't know that they ask. I
14:07:11 23 don't -- I -- I can't recall them ever asking me

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14:07:13 1 right now if they've ever, if we tell them. I

14:07:17 2 don't -- honestly, I don't recall right now.

14:07:19 3 Q. Okay. Is it possible that this form

14:07:24 4 would have been filled out while you were at ECMC

14:07:27 5 the first time before going to central booking?

14:07:35 6 A. This has to be entered in -- this, the

14:07:37 7 electronic has to be entered in the MCT. So, no,

14:07:43 8 it wouldn't have been done at that time.

14:07:46 9 Q. Is that entered at central booking?

14:07:46 10 A. No, we can enter it either in our

14:07:47 11 patrol car or at the station house.

14:07:49 12 Q. Okay.

14:07:51 13 A. The written form obviously can be

14:07:54 14 completed anywhere, but for it it be entered

14:07:57 15 electronically, which is a requirement, we have to

14:08:00 16 have access to a computer.

14:08:02 17 Q. Okay.

14:08:02 18 A. But we wouldn't do this at central

14:08:06 19 booking and we wouldn't enter it at central

14:08:09 20 booking.

14:08:09 21 Q. Is the information that's in written

14:08:10 22 form transcribed exactly as it appears on written

14:08:11 23 form to this P1375 document?

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14:08:15 1 A. It should be, yes.

14:08:16 2 Q. Okay. And who does that transcription?

14:08:19 3 A. The officer who was typing it in. Like

14:08:23 4 Officer McDermott and I, when we ride together,

14:08:26 5 typically whoever is in the passenger's side,

14:08:27 6 because someone is driving, would do the writing

14:08:29 7 and the entering.

14:08:30 8 Q. Okay. So it's the officer who makes

14:08:33 9 the written document also puts it into electronic

14:08:37 10 form as well?

14:08:37 11 MS. HUGGINS: Form.

14:08:38 12 THE WITNESS: Not necessarily.

14:08:39 13 BY MR. DAVENPORT:

14:08:39 14 Q. Okay.

14:08:39 15 A. A report technician can enter it as

14:08:39 16 well.

14:08:39 17 Q. Okay.

14:08:43 18 A. Can take the written form and enter it

14:08:45 19 as well.

14:08:45 20 Q. Okay. So in your experience you have

14:08:48 21 done a written form and then handed it to a report

14:08:51 22 technician and then they've entered it into

14:08:54 23 electronic form?

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14:08:55 1 A. Yes.

14:08:55 2 Q. Okay. Do you know if that was done on
14:08:58 3 this occasion on January 1st of 2017?

14:09:00 4 A. I don't recall.

14:09:00 5 Q. Okay. Do you recall if either you or
14:09:02 6 Ms. McDermott filled out the written form for the
14:09:06 7 P1375 report?

14:09:06 8 A. I filled out the written form.

14:09:08 9 Q. You did. Okay. Did you also fill out
14:09:11 10 the electronic form?

14:09:12 11 A. I don't recall.

14:09:13 12 Q. Okay. Would it have either been you,
14:09:19 13 Ms. McDermott, or the report technician?

14:09:21 14 A. Correct.

14:09:21 15 Q. Okay. I'm going to show you what's
14:09:40 16 been marked as Exhibit 9. Do you recognize this
14:09:45 17 document?

14:09:46 18 A. Yes.

14:09:46 19 Q. And what do you recognize it to be?

14:09:48 20 A. The case history.

14:09:52 21 Q. Now, which officer signed on this case
14:09:57 22 history form?

14:09:59 23 A. This looks like Officer McDermott.

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14:10:04 1 Q. Do you have any recollection of you
14:10:07 2 signing this document?

14:10:08 3 A. I do not.

14:10:08 4 Q. Okay. Do you see where your name is
14:10:12 5 listed on this form?

14:10:14 6 A. I do.

14:10:14 7 Q. Okay. Do you see where it says
14:10:17 8 functions performed?

14:10:17 9 A. Yes.

14:10:18 10 Q. And it says assisted with investigation
14:10:20 11 and arrest and then 710.30; do you see that?

14:10:25 12 A. Yes.

14:10:25 13 Q. What does the 710.30 refer to?

14:10:29 14 A. The statements that I documented on the
14:10:32 15 710.30.

14:10:34 16 Q. Which officers are required to enter
14:10:38 17 statements on a 710.30?

14:10:39 18 A. Any officer that has a statement that
14:10:42 19 needed to be documented.

14:10:44 20 Q. Would it be expected that any of the
14:10:46 21 assisting officers would enter their statements on
14:10:50 22 a 710.30?

14:10:51 23 A. If they had anything pertinent that the

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14:10:54 1 defendant said, they would have to have it on a
14:10:57 2 710.30.

14:10:58 3 Q. Okay. So what exactly does -- is a
14:11:03 4 710.30 used for?

14:11:04 5 MS. HUGGINS: Form. You can answer.

14:11:05 6 THE WITNESS: It's used to assist with
14:11:09 7 substantiating charges or for the District Attorney
14:11:14 8 to see. And even the defense attorney as well to
14:11:18 9 see what was said by their client or the defendant.
14:11:21 10 And it could also be used to substantiate charges.
14:11:26 11 Sometimes they say things that are incriminating.

14:11:30 12 BY MR. DAVENPORT:

14:11:30 13 Q. Okay. Would it ever be on a 710.30
14:11:33 14 what actions the individual did for their criminal
14:11:33 15 charges?

14:11:36 16 A. Not necessary --

14:11:36 17 MS. HUGGINS: Form. You can answer.

14:11:37 18 THE WITNESS: Not necessarily. Sometimes I
14:11:40 19 have seen officers put in a little parenthesis it's
14:11:43 20 not a direct quote. And then just maybe a behavior
14:11:47 21 that was done while the defendant was saying
14:11:50 22 something, like whether they were smacking
14:11:53 23 themselves in the face while yelling something.

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14:11:55 1 Like that would be an example of a 710.30 that
14:11:58 2 would have an action in parenthesis, but typically
14:12:01 3 it's a statement that's quoted.

14:12:01 4 BY MR. DAVENPORT:

14:12:03 5 Q. Would it be expected that an officer
14:12:05 6 who witnessed an individual throw themselves
14:12:08 7 intentionally at a police vehicle would offer a
14:12:12 8 statement in a 710.30?

14:12:13 9 MS. HUGGINS: Form.

14:12:13 10 THE WITNESS: No.

14:12:14 11 BY MR. DAVENPORT:

14:12:14 12 Q. No. And why is that?

14:12:15 13 A. Because it's a -- it's a question and
14:12:16 14 answer type of thing or something that a
14:12:18 15 spontaneous utterance that the defendant might say.

14:12:21 16 Q. Okay. So the 710.30s are more so for
14:12:27 17 verbal statements made by the individual. I
14:12:30 18 understand that there are instances where physical
14:12:34 19 actions may be included, but it's mostly used for
14:12:37 20 verbal things said by the -- the criminal, I guess,
14:12:41 21 in this case?

14:12:41 22 A. Correct.

14:12:42 23 Q. Okay. Okay. And is it fair to say

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14:12:45 1 that no other officer offered a statement on a
14:12:48 2 710.30?

14:12:48 3 A. Based on this case history, that's
14:12:51 4 correct.

14:12:51 5 Q. Okay. So I'm going to show you what's
14:13:08 6 been marked as Exhibit 20. Do you recognize that
14:13:13 7 document?

14:13:13 8 A. Yes.

14:13:14 9 Q. And what do you recognize it to be?

14:13:16 10 A. 710.30.

14:13:17 11 Q. Okay. Do you see on there where it
14:13:23 12 says 710.30 and 700.70?

14:13:23 13 A. Where are you?

14:13:32 14 Q. On the right-hand side towards the top.

14:13:34 15 A. The notice to defendant of intention to
14:13:42 16 offer evidence at trial?

14:13:42 17 THE REPORTER: I'm sorry. What was that?

14:13:42 18 THE WITNESS: The notice to defendant of
14:13:42 19 intention to offer evidence at trial.

14:13:45 20 BY MR. DAVENPORT:

14:13:45 21 Q. Do you see where after that it says
14:13:48 22 710.30 and 700.70?

14:13:51 23 A. Yes.

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14:13:52 1 Q. What does a 700.70 refer to?

14:13:56 2 A. Criminal procedural law.

14:13:57 3 Q. What in the criminal procedural law
14:14:00 4 does that refer to?

14:14:00 5 A. I'm not exactly sure.

14:14:02 6 Q. And what under the criminal procedural
14:14:05 7 law does 710.30 refer to?

14:14:07 8 MS. HUGGINS: Form.

14:14:08 9 THE WITNESS: It's -- it's referring to the
14:14:10 10 statements made by the defendant.

14:14:11 11 BY MR. DAVENPORT:

14:14:11 12 Q. Okay. Do you know if 700.70 refers to
14:14:17 13 statements made by officers as well?

14:14:19 14 MS. HUGGINS: Form.

14:14:19 15 THE WITNESS: I can't recall at this time.

14:14:21 16 BY MR. DAVENPORT:

14:14:21 17 Q. Okay. Do you know why it's call -- you
14:14:23 18 call it a 710.30 as opposed to a 700.70?

14:14:29 19 A. That's just how we refer to the
14:14:32 20 defendant statements, a 710.30.

14:14:34 21 Q. Okay. Now, at what time did you become
14:14:38 22 aware that Mr. Kistner was alleging that
14:14:42 23 Ms. McDermott had driven her police vehicle into

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14:14:48 1 him as opposed to Mr. Kistner throwing himself at
14:14:53 2 the police vehicle?

14:14:53 3 A. I don't remember the exact time.

14:14:56 4 Q. Was it on Schmarbeck?

14:14:58 5 A. I don't -- I don't recall anything
14:15:01 6 Mr. -- Mr. Kistner said on Schmarbeck. If he said
14:15:04 7 anything, I don't recall.

14:15:04 8 Q. Okay. Do you recall, did Mr. Kistner
14:15:08 9 make his accusations while at ECMC?

14:15:11 10 A. Not that I could recall.

14:15:13 11 Q. Okay. Did Mr. Kistner ever say that
14:15:16 12 Ms. McDermott struck him with the police vehicle as
14:15:20 13 opposed to him throwing himself at a police
14:15:24 14 vehicle?

14:15:24 15 A. I'm sorry. Can you say that again?

14:15:25 16 Q. Did Mr. Kistner ever say with you being
14:15:30 17 present or you hearing that Ms. McDermott hit him
14:15:31 18 with the police vehicle rather than Mr. Kistner
14:15:34 19 throwing himself at the police vehicle?

14:15:34 20 A. Not that I could recall.

14:15:35 21 Q. No. Okay. Now, the statements that
14:15:39 22 are offered on a 710.30, do they all have to be
14:15:42 23 statements that you personally hear?

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14:15:44 1 A. Yes.

14:15:44 2 Q. Okay. Did Mr. Kistner make any
14:15:49 3 reference to Ms. McDermott striking him with the
14:15:52 4 police vehicle as opposed to him intentionally
14:15:58 5 throwing himself at the police vehicle?

14:16:00 6 A. I don't recall him saying that
14:16:01 7 specifically.

14:16:01 8 Q. Did Mr. Kistner at any time say that
14:16:05 9 the criminal charges against him were false?

14:16:07 10 A. Not specifically.

14:16:10 11 Q. Generally?

14:16:11 12 MS. HUGGINS: Form.

14:16:13 13 THE WITNESS: If you read in my 710s what he
14:16:16 14 said, he did say charge me criminal -- charge me
14:16:17 15 criminally to cover yourselves. Again, as I said,
14:16:20 16 the reference to the lily white pussies, if you
14:16:23 17 keep telling your lies so wildly, someone might
14:16:27 18 believe you, but that was the extent of what he was
14:16:30 19 saying.

14:16:31 20 Like we're telling lies and charge me
14:16:33 21 criminally to cover yourselves, but I don't recall
14:16:36 22 him saying anything specifically about the nature
14:16:39 23 of the events that had transpired that morning.

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14:16:42 1 Q. And were you present for those
14:16:44 2 statements made by Mr. Kistner?

14:16:45 3 A. Yes, that's why I documented them.

14:16:47 4 Q. Okay. At any point did you ask
14:16:49 5 Mr. Kistner what he meant by charge me criminally
14:16:50 6 to cover yourselves?

14:16:50 7 A. I did not.

14:16:51 8 Q. At any time did you ask Mr. Kistner
14:16:54 9 what he meant by if you keep telling your lies so
14:16:55 10 wildly, someone might believe you?

14:16:57 11 A. I did not.

14:16:58 12 Q. Did you at any time ask him what he
14:17:01 13 meant by your story ain't going to fly?

14:17:10 14 A. I did not.

14:17:10 15 Q. At any time did you ask him what he
14:17:10 16 meant --

14:17:10 17 THE REPORTER: You've got to slow down,
14:17:10 18 please. Slow down.

14:17:10 19 BY MR. DAVENPORT:

14:17:14 20 Q. At any time did you ask Mr. Kistner
14:17:14 21 what he meant by internal affairs is going to eat
14:17:18 22 your ass alive?

14:17:18 23 A. I did not.

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14:17:19 1 Q. At any time were you investigated by
14:17:20 2 internal affairs for the incident on January 1st of
14:17:24 3 2017?

14:17:24 4 A. Not that I know of.

14:17:25 5 Q. Not that you know of?

14:17:26 6 A. I -- I don't know what internal affairs
14:17:29 7 is doing. I don't know. I've never been notified.

14:17:32 8 Q. Okay. Have you ever been investigated
14:17:35 9 by internal affairs before?

14:17:37 10 A. No.

14:17:38 11 Q. Okay. Have you ever had to explain
14:17:40 12 yourself to any superior officers about conduct
14:17:44 13 while working?

14:17:45 14 A. No.

14:17:45 15 MS. HUGGINS: Form. You can answer.

14:17:55 16 BY MR. DAVENPORT:

14:17:55 17 Q. Now, have you ever been accused by
14:18:00 18 anybody before of falsely arresting that
14:18:03 19 individual?

14:18:04 20 A. Not that I can recall.

14:18:06 21 Q. An individual has never told you before
14:18:10 22 that they did not believe that the criminal charges
14:18:13 23 or the criminal arrest was valid?

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14:18:16 1 MS. HUGGINS: Form. You can answer.

14:18:19 2 THE WITNESS: In the numerous encounters
14:18:22 3 I've had I'm sure there are people yell out that I
14:18:26 4 didn't do it, things of that nature, but I can't
14:18:29 5 recall anything specific at this time.

14:18:30 6 BY MR. DAVENPORT:

14:18:31 7 Q. Okay. So it's safe to say that this
14:18:33 8 doesn't happen often?

14:18:34 9 MS. HUGGINS: Form. Just the this, yeah.

14:18:38 10 BY MR. DAVENPORT:

14:18:39 11 Q. Sure. It's safe to say that it doesn't
14:18:41 12 happen often where somebody accuses you of falsely
14:18:47 13 arresting them?

14:18:47 14 MS. HUGGINS: Form. You can answer.

14:18:49 15 THE WITNESS: In regards -- like can
14:18:50 16 you -- can you clarify that, be a little more
14:18:52 17 specific, please.

14:18:53 18 BY MR. DAVENPORT:

14:18:53 19 Q. Sure. An individual that you have
14:18:55 20 arrested has that -- have any individuals that you
14:18:59 21 have arrested claimed that you falsely arrested
14:19:01 22 them?

14:19:01 23 A. Formally, I've had -- as I said before,

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14:19:05 1 at times we have encounters people are yelling I
14:19:10 2 didn't do it, things like that, you're getting the
14:19:12 3 wrong person. Clearly we need probable cause, we
14:19:13 4 have to have sufficient amount of evidence to make
14:19:14 5 an arrest, so at the time we believe we have -- we
14:19:18 6 need to make an arrest and they yell that out, but
14:19:21 7 as far as being formally accused of false arrest,
14:19:24 8 not that I could recall.

14:19:26 9 Q. I'm more so talking about informally.
14:19:29 10 During the actual arrest and investigation of that
14:19:31 11 person, you know, how often does it happen where,
14:19:36 12 you know, you're at the scene on that day arresting
14:19:39 13 somebody and that person accuses you of falsely
14:19:42 14 arresting them?

14:19:43 15 MS. HUGGINS: Form. Asked and answered.

14:19:46 16 THE WITNESS: I -- I think I'm
14:19:48 17 misunderstanding. It does happen often when people
14:19:54 18 yell out, not every single day or every single
14:19:58 19 arrest, but there are times when you arrest people
14:20:01 20 and they don't want to go to jail or they try to
14:20:06 21 deflect away and it's not me, you have the wrong
14:20:07 22 person, if that's what you're considering false
14:20:08 23 arrest. I'm trying to understand.

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14:20:11 1 BY MR. DAVENPORT:

14:20:11 2 Q. Sure. So those times where somebody
14:20:18 3 says that, you know, it wasn't me, do you ever ask
14:20:22 4 that person any follow-up questions why it could
14:20:25 5 have been somebody else?

14:20:27 6 A. Well, at that --

14:20:27 7 MS. HUGGINS: Form.

14:20:27 8 THE WITNESS: At that point when we put
14:20:30 9 somebody in handcuffs and we place them under
14:20:32 10 arrest, we have probable cause to believe that they
14:20:35 11 did it, that they're the ones who committed that
14:20:38 12 crime.

14:20:39 13 BY MR. DAVENPORT:

14:20:39 14 Q. Okay. Has it ever happened where you
14:20:42 15 believe that you had probable cause and then later
14:20:44 16 determined that you did not actually have probable
14:20:45 17 cause for the arrest?

14:20:45 18 A. Not that I could recall.

14:20:46 19 Q. Okay. Now, it says that Mr. Kistner
14:21:00 20 said spontaneously to you and Ms. McDermott, if you
14:21:05 21 keep telling your lies so wildly, someone might
14:21:08 22 believe you, your story ain't going to fly,
14:21:12 23 internal affairs is going to eat your ass alive.

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14:21:16 1 At any time did you and Ms. McDermott on the
14:21:18 2 day of the incident speak to each other about what
14:21:22 3 Mr. Kistner was referring to?

14:21:23 4 A. Not that I could recall.

14:21:26 5 Q. At any time that was not January 1st of
14:21:31 6 2017, did you and Ms. McDermott ever speak about
14:21:34 7 this incident involving Mr. Kistner on January 1st
14:21:38 8 of 2017?

14:21:38 9 A. Yes.

14:21:39 10 Q. Okay. And when did you speak about it?

14:21:42 11 A. We spoke when we received paperwork
14:21:45 12 about, you know, we're going through this. And
14:21:50 13 then about scheduling, do you have to go in, you
14:21:54 14 know -- or, you know, as the process is going
14:21:55 15 along, we're new to the process, so when -- you
14:21:58 16 know, when are you going in, you know, just things
14:22:00 17 of that nature.

14:22:01 18 Q. Would you and Ms. McDermott go
14:22:04 19 together?

14:22:04 20 A. When?

14:22:05 21 Q. Well, I'm sorry, let's -- what do you
14:22:08 22 refer -- what do you mean by when you say we are
14:22:10 23 going in for this process, when -- what does that

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14:22:14 1 refer to?

14:22:14 2 A. To meet with our attorney.

14:22:16 3 Q. Okay. Would you and Ms. McDermott go
14:22:19 4 together?

14:22:19 5 MS. HUGGINS: Form.

14:22:21 6 THE WITNESS: I believe we may have
14:22:25 7 conferenced once or twice together.

14:22:26 8 BY MR. DAVENPORT:

14:22:26 9 Q. Okay.

14:22:27 10 A. I'm not certain.

14:22:28 11 Q. Okay. So when you guys are asking, are
14:22:32 12 you going in, it's not referring to, you know, a
14:22:35 13 carpooling situation or something like that, right?

14:22:38 14 A. Correct.

14:22:38 15 Q. Okay. What is Ms. McDermott's current
14:22:47 16 roll in the Buffalo Police Department?

14:22:49 17 A. She's a detective.

14:22:51 18 Q. Is she a detective in the C District?

14:22:54 19 A. No.

14:22:54 20 Q. Okay. Do you have any sort of a work
14:22:59 21 interaction with Ms. McDermott as a lieutenant of
14:23:02 22 the C District and her a detective in a separate
14:23:07 23 district?

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14:23:08 1 A. I don't recall if we've had any cases
14:23:10 2 that overlapped in the district, not that I can
14:23:14 3 recall right now. But if she would need
14:23:18 4 assistance, if one of her suspects were living in
14:23:21 5 my district, we may speak in regards to that, but
14:23:25 6 not that I could recall.

14:23:25 7 Q. Okay. Now, when you and Ms. McDermott
14:23:28 8 received the paperwork for this lawsuit, what did
14:23:31 9 you do next?

14:23:35 10 A. I don't recall.

14:23:37 11 Q. Did you speak with somebody in the
14:23:40 12 union about this lawsuit?

14:23:42 13 A. No, not that I could recall.

14:23:45 14 Q. Okay. What did you do with that
14:23:47 15 paperwork?

14:23:54 16 A. I did speak to the union. I was
14:23:57 17 advised to take our paperwork up to corporation
14:24:01 18 counsel.

14:24:01 19 Q. Okay. Did you take that paperwork
14:24:03 20 personally?

14:24:04 21 A. Yes.

14:24:04 22 Q. Okay. When you were handed that
14:24:06 23 paperwork, did you review the videos that were

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14:24:09 1 enclosed?

14:24:09 2 A. Yes.

14:24:10 3 Q. Did you review those on your own or did
14:24:14 4 you review them with the union representative?

14:24:17 5 A. On my own.

14:24:18 6 Q. And that would have been when you
14:24:20 7 initially received the paperwork?

14:24:22 8 A. Yes.

14:24:23 9 Q. Okay. Did you contact Ms. McDermott
14:24:25 10 after watching the video?

14:24:29 11 A. I know I contacted her as soon as I
14:24:32 12 received the packet for this -- the -- I don't know
14:24:37 13 whatever you want to call it, when I was served the
14:24:40 14 paperwork. I don't specifically remember calling
14:24:43 15 her after watching the video.

14:24:47 16 Q. When you did contact Ms. McDermott or
14:24:49 17 spoke with Ms. McDermott, did she say that she also
14:24:53 18 had watched the video?

14:24:57 19 A. I don't recall.

14:25:00 20 Q. Okay. Did you speak with either Carl
14:25:03 21 Schulz or Kyle Moriarity about the paperwork when
14:25:08 22 you received the complaint?

14:25:09 23 A. Yes.

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14:25:09 1 Q. Okay. At what point did you speak with
14:25:14 2 those individuals?

14:25:15 3 A. I believe it was the same day that we
14:25:18 4 were served.

14:25:18 5 Q. Okay. Did you contact all of them
14:25:22 6 individually?

14:25:23 7 A. Yes.

14:25:24 8 Q. What did you all say about the
14:25:29 9 complaint?

14:25:29 10 MS. HUGGINS: Form.

14:25:30 11 THE WITNESS: I just -- it was so long ago.
14:25:33 12 I vaguely remember just saying, hey, I was just
14:25:37 13 served with this lawsuit. I don't know if one is
14:25:40 14 coming to you, but we were all there for the
14:25:40 15 incident.

14:25:43 16 You know, let me know if, you know,
14:25:45 17 you -- you get paperwork as well. And then I
14:25:47 18 remember them all responding I got -- I received
14:25:49 19 paperwork as well.

14:25:50 20 Q. Okay. Was that a phone conversation?

14:25:52 21 A. Yes.

14:25:52 22 Q. Okay. No text messages?

14:25:55 23 A. No.

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14:25:57 1 Q. Okay. With Ms. McDermott did you talk
14:26:00 2 about any of the contents of the complaint?

14:26:02 3 A. Not that I could recall.

14:26:04 4 Q. Any of the specific allegations that
14:26:06 5 were made?

14:26:06 6 A. Not that I could recall.

14:26:08 7 Q. Okay. Do you know what the disposition
14:26:13 8 was of Mr. Kistner's criminal charges?

14:26:16 9 A. No.

14:26:16 10 Q. As you sit here today, you do not know?

14:26:19 11 A. Well, I sat in for Officer McDermott's
14:26:23 12 deposition, I learned that day what had happened,
14:26:26 13 but at the time up until last week I had no idea.

14:26:29 14 Q. Okay. After receiving that initial
14:26:32 15 paperwork and aside from contacting Ms. McDermott
14:26:36 16 about whether you would be going to go speak with
14:26:39 17 your attorney, have you had any other conversations
14:26:43 18 with any of the other defendants?

14:26:45 19 MS. HUGGINS: Form.

14:26:45 20 BY MR. DAVENPORT:

14:26:46 21 Q. Outside of the presence of your
14:26:47 22 attorney?

14:26:47 23 A. In regards --

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14:26:48 1 MS. HUGGINS: Same form objection. You can
14:26:51 2 answer.

14:26:51 3 THE WITNESS: I'm sorry. Can you repeat
14:26:53 4 that again?

14:26:53 5 BY MR. DAVENPORT:

14:26:54 6 Q. Aside from conversations with the other
14:26:57 7 defendants the day that you received the paperwork
14:26:59 8 and aside from conversations that you had with
14:27:03 9 Ms. McDermott about times that you would have been
14:27:06 10 going to go meet with your attorney, have you had
14:27:09 11 any other conversations with any of the other
14:27:11 12 defendants who are named in this lawsuit?

14:27:13 13 A. Regarding in general or regarding?

14:27:17 14 Q. Regarding this complaint and lawsuit
14:27:19 15 specifically.

14:27:20 16 A. Again, just with the scheduling.

14:27:22 17 Q. Okay. Are you aware that there was a
14:27:27 18 news report that was done on this incident?

14:27:28 19 A. Yes.

14:27:29 20 Q. Okay. Did you contact any of the
14:27:31 21 officers to discuss that news report?

14:27:33 22 A. To discuss it, no.

14:27:40 23 Q. Okay. Now, is there a signature

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14:27:45 1 page for this 710.30 form?

14:27:48 2 A. No.

14:27:49 3 Q. Okay. So officers aren't required to
14:27:52 4 sign off on these statements that are authored?

14:27:58 5 A. Excuse me. Can you repeat that?

14:27:59 6 Q. Officers aren't required to sign off on
14:28:01 7 a 710.30 form?

14:28:01 8 A. No.

14:28:02 9 Q. Okay. Did you ever receive any
14:28:05 10 training on how to fill out a 710.30 form?

14:28:08 11 A. In the academy.

14:28:09 12 Q. Which academy, the Buffalo?

14:28:11 13 A. The Erie County --

14:28:13 14 Q. Okay.

14:28:13 15 A. -- training academy.

14:28:15 16 Q. And never with the Buffalo Police
14:28:17 17 Department?

14:28:17 18 A. Correct.

14:28:19 19 Q. Okay.

14:28:19 20 A. That I can recall.

14:28:20 21 Q. Okay.

14:28:31 22 MR. DAVENPORT: Can we mark this as
14:28:34 23 Exhibit 26.

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14:28:34 1 The following was marked for Identification:

2 EXH. 26 Arresting Report

14:29:09 3 BY MR. DAVENPORT:

14:29:10 4 Q. I'm going to show you what's been

14:29:13 5 marked as Exhibit 26. Do you recognize that

14:29:18 6 document?

14:29:18 7 A. Yes.

14:29:19 8 Q. And what do you recognize it to be?

14:29:21 9 A. An arrest booking report.

14:29:23 10 Q. Okay. Who would have created the

14:29:25 11 arresting or booking report?

14:29:28 12 A. I'm not certain if this is the report

14:29:30 13 technician or the cellblock attendant enters the

14:29:36 14 information for it.

14:29:36 15 Q. But this would have been a document

14:29:40 16 that's created by somebody at central booking?

14:29:42 17 A. Correct.

14:29:43 18 MS. HUGGINS: Form.

14:29:43 19 BY MR. DAVENPORT:

14:29:44 20 Q. Okay.

14:29:45 21 A. I believe so.

14:29:45 22 Q. Do you know an individual named

14:29:48 23 Christine Young?

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14:29:49 1 A. No.

14:29:51 2 Q. Is it possible that she was the report
14:29:53 3 technician at central booking on the day of the
14:29:58 4 incident?

14:29:58 5 A. I don't recognize that name at all.

14:30:01 6 Q. Okay.

14:30:02 7 A. She may be. I don't know who she is.

14:30:04 8 Q. Okay. You haven't come across her at
14:30:08 9 any point during your career?

14:30:09 10 A. Again, I don't recognize the name and I
14:30:09 11 can't put a face to it. So I may have, I'm just
14:30:13 12 not certain who that is right now.

14:30:13 13 Q. Okay. Now, when would this form have
14:30:20 14 been given to you?

14:30:22 15 MS. HUGGINS: Form.

14:30:22 16 THE WITNESS: I don't get this form.

14:30:24 17 BY MR. DAVENPORT:

14:30:24 18 Q. Okay. Who does central booking give
14:30:30 19 this form to?

14:30:32 20 A. I don't work down in central booking,
14:30:36 21 I'm not certain what their policies and procedures
14:30:38 22 are.

14:30:52 23 MR. DAVENPORT: Okay. Can I mark this as

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14:30:54 1 Exhibit 27.

14:30:54 2 The following was marked for Identification:

3 EXH. 27 Buffalo Police Department

4 Prisoner Property Receipt

14:31:28 5 BY MR. DAVENPORT:

14:31:29 6 Q. So I'm going to show you what's been

14:31:32 7 marked as Exhibit 27. Do you recognize this

14:31:34 8 document?

14:31:36 9 A. Yes.

14:31:36 10 Q. Okay. What do you recognize that to

14:31:38 11 be?

14:31:38 12 A. A prisoner property receipt.

14:31:41 13 Q. Okay. Now, do you see underneath

14:31:43 14 property list where it says no property taken,

14:31:46 15 dash, appearance ticket?

14:31:47 16 A. Yes.

14:31:48 17 Q. Now, if it says, dash, appearance

14:31:53 18 ticket, does that mean he is being given an

14:31:56 19 appearance ticket?

14:31:59 20 A. I don't recall this -- this specific

14:32:01 21 sheet, so I don't know what the -- and we don't

14:32:05 22 create this, again, so I don't know what the report

14:32:08 23 technician who put this on here why they did that,

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14:32:13 1 I don't.

14:32:13 2 Q. Okay. All right. So do you see where
14:32:17 3 it says prisoner signature and then it says CL and
14:32:20 4 it's circled?

14:32:21 5 A. Uh-huh.

14:32:22 6 Q. Do you know what that's referring to?

14:32:28 7 MS. HUGGINS: You have to say yes or no.
14:32:30 8 She can't record a uh-huh.

14:32:30 9 THE WITNESS: Oh, no, I'm thinking. I'm
14:32:30 10 sorry.

14:32:35 11 MS. HUGGINS: Yeah, no, the last question.

14:32:36 12 THE WITNESS: Oh, I'm sorry, what was the
14:32:39 13 last question.

14:32:39 14 MS. HUGGINS: Just so it's clearly on the
14:32:41 15 record.

14:32:41 16 THE WITNESS: Can you repeat what the last
14:32:44 17 question was?

14:32:44 18 BY MR. DAVENPORT:

14:32:45 19 Q. Yeah, sure. So do you see prisoner
14:32:48 20 signature in the bottom left corner?

14:32:50 21 A. Yes.

14:32:50 22 Q. Okay. Do you see where it says CL with
14:32:53 23 a circle?

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14:32:53 1 A. Yes.

14:32:54 2 Q. Do you know what that's referring to?

14:32:58 3 A. As I said earlier, it could possibly

14:33:02 4 mean that he was cuffed for the signature -- or

14:33:06 5 I -- honestly, I don't know.

14:33:06 6 Q. Okay. Do you see where it says

14:33:08 7 property received time 1600?

14:33:11 8 A. Yes.

14:33:12 9 Q. Now, does that mean that he was issued

14:33:16 10 an appearance ticket at 1600?

14:33:22 11 A. Again, I didn't write this time on

14:33:25 12 here. I don't know exactly what -- it says

14:33:28 13 property received at 1600.

14:33:30 14 Q. So I understand that you've never

14:33:32 15 created one of these documents, but have you ever

14:33:35 16 seen one of them before?

14:33:36 17 A. Not the typed.

14:33:38 18 Q. Okay. How does it typically appear to

14:33:41 19 you, then?

14:33:41 20 A. Written.

14:33:43 21 Q. Okay. And who handwrites that?

14:33:43 22 A. The report technician.

14:33:45 23 Q. And have you ever been handed a

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14:33:46 1 handwritten property receipt form before?

14:33:48 2 A. We give it to the defendant.

14:33:50 3 Q. You give it to the defendant?

14:33:52 4 A. Correct, they give it to us and we give

14:33:55 5 it to the defendant and they take it back with

14:33:56 6 them. It stays with them the whole time, because

14:34:00 7 that's how they get their property back.

14:34:00 8 Q. Okay. So that would have been

14:34:01 9 something that would have been given to Mr. Kistner

14:34:01 10 with his appearance ticket?

14:34:03 11 A. Correct.

14:34:04 12 Q. Okay. Are there any --

14:34:06 13 A. If one was created for him, because,

14:34:09 14 like I said, I don't know what this is.

14:34:11 15 Q. Are there any other documents that an

14:34:14 16 individual who's receiving an appearance ticket

14:34:14 17 would receive besides a prisoner's property

14:34:19 18 receipt?

14:34:19 19 MS. HUGGINS: Form. You may answer.

14:34:20 20 THE WITNESS: Not that I could recall.

14:34:23 21 BY MR. DAVENPORT:

14:34:23 22 Q. Okay. I'm going to show you what's

14:34:38 23 been marked as Exhibit 15. Do you recognize that

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14:34:46 1 document?

14:34:46 2 A. Yes.

14:34:47 3 Q. Okay. What do you recognize that to
14:34:49 4 be?

14:34:49 5 A. The arrest form.

14:34:50 6 Q. Okay. And that was the P163 that you
14:34:54 7 referred to before?

14:34:55 8 A. Yes.

14:34:56 9 Q. Okay. Is this the handwritten form
14:35:01 10 that would be transferred into a 1375 report?

14:35:06 11 A. No.

14:35:06 12 Q. Okay. So those are different?

14:35:08 13 A. Yes.

14:35:09 14 Q. Is the P163 changed into an electronic
14:35:15 15 form?

14:35:17 16 A. I'm not certain.

14:35:19 17 Q. Okay. Who would fill out the
14:35:23 18 handwritten P163 form?

14:35:26 19 A. The arresting officer.

14:35:27 20 Q. Okay. So that would have been
14:35:30 21 Ms. McDermott?

14:35:30 22 A. Correct.

14:35:30 23 Q. Okay. Now, where it says the

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14:35:36 1 processing report technician, would that be the
14:35:40 2 person at central booking?

14:35:44 3 A. Yes.

14:35:45 4 Q. Okay. Do you know whose signature that
14:35:50 5 is?

14:35:50 6 A. I do not.

14:35:51 7 Q. Okay. Now, would this be a form that
14:35:58 8 either you or Ms. McDermott would have filled out
14:36:01 9 at central booking?

14:36:03 10 A. It could have been filled out at
14:36:05 11 central booking.

14:36:06 12 Q. Okay. Would it be handed to the report
14:36:09 13 technician at central booking?

14:36:11 14 A. Yes.

14:36:12 15 Q. Okay. Would this form ever be handed
14:36:14 16 to Mr. Kistner?

14:36:16 17 A. No.

14:36:16 18 Q. Okay. So he would never have a chance
14:36:20 19 to see this document on the day of his arrest?

14:36:22 20 A. No.

14:36:32 21 Q. Now, where it says the complainant's
14:36:35 22 name is SONY, what does that refer to?

14:36:40 23 A. State of New -- State of New York.

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14:36:41 1 Q. Okay. Why wouldn't Ms. McDermott's
14:36:45 2 name be listed as the complainant?

14:36:48 3 A. It's just a procedural thing we do. We
14:36:51 4 work on -- our charges are filed on behalf of the
14:36:54 5 State of New York.

14:36:54 6 Q. Okay. Where it says use of force,
14:37:01 7 that's checked no, correct?

14:37:02 8 A. Yes.

14:37:04 9 Q. So would striking an individual with a
14:37:10 10 car be considered a use of force?

14:37:13 11 MS. HUGGINS: Form. You can answer.

14:37:14 12 THE WITNESS: That would depend on the
14:37:18 13 circumstance in which a vehicle struck an
14:37:18 14 individual.

14:37:21 15 BY MR. DAVENPORT:

14:37:21 16 Q. Is it possible?

14:37:23 17 A. Pardon?

14:37:23 18 Q. Is it possible that a use of force
14:37:27 19 could include striking an individual with a police
14:37:29 20 car?

14:37:29 21 MS. HUGGINS: Form. You can answer.

14:37:30 22 THE WITNESS: If a person was intentionally
14:37:31 23 struck with a police vehicle, yes.

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14:37:33 1 BY MR. DAVENPORT:

14:37:33 2 Q. What if that individual was negligently
14:37:38 3 struck by a police vehicle?

14:37:39 4 MS. HUGGINS: Form.

14:37:39 5 THE WITNESS: Then that wouldn't be
14:37:41 6 considered -- I don't believe that would be
14:37:42 7 considered a use of force.

14:37:44 8 MR. DAVENPORT: Okay. I'm going to show you
14:38:16 9 what's been marked as Exhibit 13. And then I would
14:38:24 10 like to mark this as Exhibit 28.

14:38:24 11 The following was marked for Identification:

12 EXH. 28 Department of Law Letter
13 dated 12/17/19

14:39:10 14 BY MR. DAVENPORT:

14:39:10 15 Q. I'm going to also show you what's been
14:39:14 16 marked as Exhibit 28. Now, on Exhibit 13 would you
14:39:18 17 please turn to page 13?

14:39:20 18 Now, question 19 asks identify the badge or
14:39:37 19 identification number, rank, or title, and height
14:39:41 20 and weight of all defendants shown in the video
14:39:44 21 attached as Exhibit A to the complaint as of
14:39:48 22 January 1st, 2017.

14:39:51 23 Now, I would also like you to turn to

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14:39:56 1 page 16 on Exhibit 13. What is the date that's
14:40:07 2 listed on page 16?

14:40:09 3 A. December 12th, 2018.

14:40:12 4 Q. Okay. I want to now direct your
14:40:15 5 attention to Exhibit 28. Now, in response to the
14:40:21 6 question that was posed on page 13 of Exhibit 13
14:40:26 7 it's the same question, identify the badge or
14:40:29 8 identification number, rank, or title, and height
14:40:33 9 and weight of all defendants shown in the video
14:40:36 10 attached as Exhibit A to the complaint as of
14:40:39 11 January 1st of 2017.

14:40:40 12 Now, the second to last sentence says that
14:40:44 13 Jenny Velez was promoted to lieutenant on July 2nd
14:40:49 14 of 2018. Now, I want you to again look at
14:40:53 15 response 19 on Exhibit 13 and tell me do you see
14:40:57 16 that information anywhere in response to
14:41:01 17 interrogatory 19?

14:41:02 18 MS. HUGGINS: Form.

14:41:07 19 BY MR. DAVENPORT:

14:41:08 20 Q. Exhibit 13, page 19, do you see Jenny
14:41:12 21 Velez?

14:41:13 22 A. Page 13, 19. Okay. Slow it down for
14:41:14 23 me, because this is a lot of words everywhere.

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14:41:17 1 So page 13, 19, I see this. Now, what are
14:41:23 2 you asking me in regards to the other page?

14:41:25 3 Q. Okay. I want you to look on Exhibit 28
14:41:30 4 and tell me do you see the line that says Jenny
14:41:32 5 Velez was promoted to lieutenant on July 2nd of
14:41:36 6 2018?

14:41:36 7 A. Yes.

14:41:36 8 Q. Do you see that?

14:41:37 9 A. Yes.

14:41:37 10 Q. Okay. Now, I want you to look at
14:41:41 11 Exhibit 13, response number 19.

14:41:43 12 A. Uh-huh, yes.

14:41:44 13 Q. And I want you to tell me do you see
14:41:47 14 that information as it's written on Exhibit 28
14:41:49 15 anywhere on Exhibit 13?

14:41:52 16 MS. HUGGINS: Form.

14:41:55 17 THE WITNESS: The line that says Jenny Velez
14:41:57 18 was promoted to lieutenant on July 2nd, 2018 is not
14:42:01 19 on page 13.

14:42:02 20 BY MR. DAVENPORT:

14:42:03 21 Q. Thank you. Now, turning back towards
14:42:06 22 Exhibit 28, what is the date of this letter?

14:42:12 23 A. December 17th, 2019.

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14:42:15 1 Q. And as you stated before, the date on
14:42:19 2 Exhibit 13 is December 12th of 2018.

14:42:26 3 A. Yes.

14:42:26 4 Q. So this correction would have been made
14:42:30 5 more than a year after Exhibit 13 had been put
14:42:33 6 together, correct?

14:42:35 7 MS. HUGGINS: Form.

14:42:38 8 THE WITNESS: This is dated December 12th,
14:42:41 9 2018. And this one is dated December 17th, 2019.

14:42:45 10 BY MR. DAVENPORT:

14:42:45 11 Q. So you agree that would have been more
14:42:45 12 than a year?

14:42:45 13 MS. HUGGINS: Form.

14:42:47 14 THE WITNESS: The difference between the two
14:42:48 15 dates is more than a year.

14:42:51 16 BY MR. DAVENPORT:

14:42:51 17 Q. Okay. So I guess my question is, if
14:42:54 18 you were promoted on July 2nd of 2018, which is
14:42:57 19 before the date of Exhibit 13, which is
14:43:00 20 December 12th of 2018, why did you not include that
14:43:04 21 information for the question that was posed to you
14:43:09 22 in this interrogatory on Exhibit 13?

14:43:12 23 MS. HUGGINS: Form.

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14:43:13 1 THE WITNESS: I don't understand the
14:43:14 2 question.

14:43:14 3 BY MR. DAVENPORT:

14:43:15 4 Q. You were promoted on July 2nd of 2018,
14:43:18 5 correct?

14:43:18 6 A. Yes.

14:43:18 7 Q. Okay. And the date of Exhibit 13 is
14:43:22 8 December 12th of 2018?

14:43:25 9 A. Yes.

14:43:25 10 Q. And December 12th, 2018 would have been
14:43:28 11 after you were promoted on July 2nd of 2018?

14:43:31 12 MS. HUGGINS: Form.

14:43:32 13 THE WITNESS: I was promoted after. Yeah, I
14:43:37 14 was -- this was done after I was promoted.

14:43:39 15 BY MR. DAVENPORT:

14:43:39 16 Q. Okay.

14:43:40 17 A. It's dated after I was promoted anyway.

14:43:42 18 Q. So why on the document that was created
14:43:45 19 or dated on December 12th of 2018 was the
14:43:48 20 information that's on Exhibit 28 not included in
14:43:52 21 the response on Exhibit 13?

14:43:55 22 MS. HUGGINS: Form.

14:43:56 23 THE WITNESS: It -- it seems to be an error,

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14:43:58 1 because on January 1, 2017 I was a patrol officer,
14:44:01 2 not a lieutenant. So it appears that this is just
14:44:07 3 articulating that at the time of the incident I was
14:44:07 4 a patrol officer, not a lieutenant.

14:44:08 5 So this was entered in error, so it's just
14:44:11 6 correcting the fact that I was promoted to
14:44:14 7 lieutenant after the date of the incident after 1/1
14:44:17 8 of 7 -- 2017.

14:44:17 9 BY MR. DAVENPORT:

14:44:17 10 Q. Did you review the responses on
14:44:20 11 Exhibit 13 before they were signed by your
14:44:22 12 attorney?

14:44:23 13 A. I believe I did read this.

14:44:26 14 Q. Did you review it before December 12th
14:44:29 15 of 2018?

14:44:29 16 MS. HUGGINS: Form.

14:44:31 17 THE WITNESS: I don't recall the exact date.
14:44:34 18 There's a lot of writing, it may have been an
14:44:37 19 oversight. I'm not certain.

14:44:38 20 BY MR. DAVENPORT:

14:44:39 21 Q. Okay. At any point were you asked for
14:44:43 22 a verification for any sort of documents, were you
14:44:50 23 ever asked for a verification?

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14:44:52 1 MS. HUGGINS: Form.

14:44:52 2 THE WITNESS: That's vague. What kind of
14:44:55 3 document?

14:44:55 4 BY MR. DAVENPORT:

14:44:56 5 Q. Here, I'll show you.

14:45:08 6 MS. HUGGINS: She has it in front of her
14:45:12 7 right now.

14:45:13 8 MR. DAVENPORT: No, she doesn't have her
14:45:16 9 verification.

14:45:16 10 MS. HUGGINS: Oh, I'm sorry, I thought you
14:45:19 11 were referring to the interrogator.

14:45:21 12 MR. DAVENPORT: Can I have this marked as
14:45:23 13 Exhibit 29.

14:45:23 14 The following was marked for Identification:

15 EXH. 29 Verification Document

14:45:30 16 MR. DAVENPORT: And, also, it's 2:45, I
14:45:32 17 don't know if you guys want to take a break or not.

14:45:34 18 MS. HUGGINS: Let's do that.

14:45:34 19 (Discussion off the record at
14:45:34 20 1445.)

15:07:47 21 (On the record at 1507.)

15:07:47 22 BY MR. DAVENPORT:

15:07:49 23 Q. So, Ms. Velez, we were reviewing

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15:07:53 1 Exhibit 28 and Exhibit 13. I will now show you
15:07:59 2 what has been marked as Exhibit 29. Do you
15:08:06 3 recognize that document?

15:08:07 4 A. Yes.

15:08:08 5 Q. And what do you recognize it to be?

15:08:10 6 A. I believe it's the back page to this
15:08:14 7 when I signed that I reviewed this.

15:08:15 8 Q. Okay. Do you know approximately when
15:08:17 9 you signed this document?

15:08:18 10 MS. HUGGINS: Form.

15:08:19 11 THE WITNESS: No.

15:08:20 12 BY MR. DAVENPORT:

15:08:20 13 Q. Okay. Would it have been
15:08:23 14 in -- recently?

15:08:25 15 A. I don't recall.

15:08:27 16 Q. Would it have been within the last
15:08:29 17 year?

15:08:29 18 A. Yes.

15:08:30 19 Q. Okay.

15:08:31 20 A. I believe so. I -- I recall going
15:08:36 21 through this page by page. I recall doing this, I
15:08:40 22 just don't recall when.

15:08:41 23 Q. Okay. Did you sign this document at

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15:08:45 1 the same day that you went through this Exhibit 13
15:08:47 2 page by page?

15:08:48 3 MS. HUGGINS: Form. Well, I'm going to
15:08:52 4 object, because I think that you're very close if
15:08:56 5 not over the line of attorney/client.

15:08:58 6 Without revealing discussions that you and I
15:09:01 7 may have had, have you met with me to discuss the
15:09:03 8 incident that is the subject of this lawsuit?

15:09:06 9 MR. DAVENPORT: Well, no, that wasn't my
15:09:08 10 question.

15:09:08 11 MS. HUGGINS: No.

15:09:08 12 MR. DAVENPORT: You're mischaracterizing my
15:09:11 13 question entirely. I just asked her did you sign
15:09:14 14 this document on the same day that you went through
15:09:17 15 Exhibit 13.

15:09:18 16 MS. HUGGINS: Form. I -- I believe that you
15:09:22 17 may have even crossed the line into attorney/client
15:09:26 18 privilege. If not, you are up -- up against that
15:09:27 19 line right now.

15:09:28 20 MR. DAVENPORT: Okay.

15:09:29 21 MS. HUGGINS: What -- what was I going to
15:09:33 22 inquire of my client without revealing or waiving
15:09:39 23 that privilege is if legal documents were prepared,

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15:09:44 1 if she's had conversations with me, and if she has
15:09:48 2 reviewed those documents and signed off on them.

15:09:52 3 I believe that's what you're trying to do,
15:09:54 4 but at -- at this point you have gotten to a point
15:09:54 5 where you're asking about when certain things were
15:09:58 6 done, who clearly she has not signed her name to,
15:10:01 7 which would be Exhibit 28, and that is a document
15:10:03 8 that I signed my name to -- to as an attorney in
15:10:05 9 this matter.

15:10:06 10 And I think that you veered towards
15:10:09 11 attorney/client privilege in a way that is not
15:10:12 12 necessary and not discoverable in this matter.

15:10:16 13 MR. DAVENPORT: Are you going to direct her
15:10:18 14 to not answer the question?

15:10:20 15 MS. HUGGINS: I think what you're trying to
15:10:21 16 ask is did you look at -- did you read a document
15:10:23 17 before you signed a verification page.

15:10:25 18 That is fine. I'm perfectly okay with that,
15:10:28 19 but I'm not okay with you continuing to ask
15:10:32 20 questions about meeting about the content of
15:10:35 21 documents when an attorney is involved and present
15:10:35 22 for it.

15:10:39 23 MR. DAVENPORT: Didn't ask about that. I

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15:10:40 1 asked did she --

15:10:40 2 MS. HUGGINS: I respectfully disagree and I

15:10:43 3 think the record will reflect what you've asked.

15:10:45 4 And -- and so at this point I'm -- I'll -- I'm

15:10:50 5 willing to allow her to ask questions about the

15:10:50 6 verification page and what she reviewed before she

15:10:56 7 signed that, but I'm not willing to allow her to

15:10:58 8 ask questions -- or answer questions with regard to

15:11:02 9 documents that were prepared in conjunction with

15:11:05 10 her attorney during the course of representation in

15:11:09 11 this case.

15:11:09 12 BY MR. DAVENPORT:

15:11:09 13 Q. Would you agree that what is written in

15:11:12 14 the interrogatories were -- was provided to us?

15:11:14 15 MS. HUGGINS: Okay. This is not my

15:11:18 16 deposition.

15:11:19 17 MR. DAVENPORT: That's correct, but you are

15:11:20 18 intruding on my deposition right now.

15:11:20 19 MS. HUGGINS: No, I am making a record,

15:11:25 20 because I believe that you have now veered into

15:11:28 21 privileged matter.

15:11:29 22 I'm permitted to do so in a deposition.

15:11:32 23 MR. DAVENPORT: You are absolutely

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15:11:33 1 privileged to do so. You are also privileged to
15:11:37 2 tell your client to not answer the questions that
15:11:38 3 I've asked, which it seems that you are veering
15:11:41 4 towards doing.

15:11:41 5 Just know that if you obstruct my
15:11:45 6 deposition, you, your clients, the City of Buffalo,
15:11:49 7 will be responsible for bringing this individual
15:11:51 8 back to testify.

15:11:53 9 So, Ms. Velez, I would assume that you do
15:11:57 10 not want to come back --

15:11:57 11 MS. HUGGINS: No.

15:11:59 12 MR. DAVENPORT: -- for a deposition to do
15:12:00 13 so.

15:12:00 14 MS. HUGGINS: No, no, no, no, we're
15:12:02 15 not -- we're not going to continue this way. Okay?

15:12:04 16 MR. DAVENPORT: Okay.

15:12:04 17 MS. HUGGINS: She is -- she is going to
15:12:06 18 answer questions that are proper deposition
15:12:10 19 questions, but if a question asks about
15:12:14 20 attorney/client privilege, I'm going to invoke that
15:12:17 21 and she is not going to answer those questions.

15:12:21 22 Now, I -- I have no problem with you asking
15:12:24 23 her if she reviewed documentation before she signed

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15:12:28 1 a verification page, but you're not going to go
15:12:32 2 into what was -- when and where and who and what
15:12:35 3 was discussed during meetings with her attorney.
15:12:36 4 She -- you're not going to do that and I'm going to
15:12:36 5 invoke privilege for that -- those questions.

15:12:36 6 BY MR. DAVENPORT:

15:12:39 7 Q. Okay. I haven't asked her a single
15:12:40 8 question about what was said to you during her
15:12:42 9 meeting, so I'm going to continue asking you,
15:12:46 10 Ms. Velez, when approximately did you sign this
15:12:49 11 verification page?

15:12:49 12 A. I don't recall the exact date.

15:12:50 13 Q. Okay. Would it have been roughly
15:12:55 14 around December of 2019?

15:12:57 15 A. I don't recall.

15:12:58 16 Q. Okay. When you signed this
15:13:03 17 verification page, did you review the responses in
15:13:07 18 Exhibit 13?

15:13:08 19 A. I did read this packet.

15:13:11 20 Q. Okay. So when you reviewed the
15:13:18 21 responses in Exhibit 13, did you notice any
15:13:22 22 responses that you wished to amend or change?

15:13:25 23 A. I was not -- at this time the one that

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15:13:29 1 was brought to my attention is the one where it
15:13:31 2 says that I held the rank of lieutenant on
15:13:34 3 January 1, 2017, because I did not.

15:13:36 4 Q. Okay. So prior to December of 2018,
15:13:46 5 did you review the response to Exhibit 19 -- or
15:13:50 6 question 19?

15:13:51 7 A. I don't recall the exact date.

15:13:53 8 Q. Was it more than a year ago that you
15:13:59 9 would have reviewed this document and reviewed the
15:14:03 10 response to question 19?

15:14:06 11 A. Again, I don't remember the exact date.
15:14:11 12 I don't believe it was more than a year, but I
15:14:14 13 don't recall the exact date. If it's the date
15:14:18 14 dated, I don't recall.

15:14:18 15 Q. Okay. Did you review these responses
15:14:25 16 before you signed your verification?

15:14:28 17 A. I believe so.

15:14:29 18 Q. Okay. Did you review them more than
15:14:33 19 one time before you signed this verification?

15:14:36 20 A. I don't recall.

15:14:37 21 Q. Okay. When you reviewed your response
15:14:43 22 to number 19, did you contact your attorney to tell
15:14:48 23 her that you did not agree with the response to

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15:14:53 1 number 19?

15:14:54 2 MS. HUGGINS: Form. And, again, you just
15:14:54 3 asked what she told her attorney, it's
15:14:54 4 attorney/client.

15:14:56 5 MR. DAVENPORT: I asked did she contact her,
15:14:58 6 did she contact you.

15:14:58 7 MS. HUGGINS: Form.

15:15:00 8 MR. DAVENPORT: I just want to know how that
15:15:03 9 amendment was made?

15:15:04 10 MS. HUGGINS: No, you are --

15:15:05 11 MR. DAVENPORT: You're misconstruing my
15:15:08 12 questions and you're obstructing --

15:15:08 13 MS. HUGGINS: No.

15:15:08 14 MR. DAVENPORT: -- right now in my
15:15:08 15 deposition.

15:15:09 16 MS. HUGGINS: No, I know exactly what has
15:15:11 17 gone on between my client and me and that -- and I
15:15:15 18 am invoking attorney/client privilege.

15:15:16 19 MR. DAVENPORT: Are you directing her to not
15:15:16 20 answer my question?

15:15:16 21 MS. HUGGINS: This is the problem here.

15:15:16 22 MR. DAVENPORT: What's that?

15:15:20 23 MS. HUGGINS: And this is why I made that

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15:15:20 1 objection earlier. You're asking questions about
15:15:23 2 when legal documents were prepared with an attorney
15:15:27 3 that -- that undoubtedly invokes and involves
15:15:32 4 privilege.

15:15:33 5 I will never, ever ask your client about any
15:15:38 6 document that you -- that he has he ever worked or
15:15:40 7 collaborated on with you in the course of the
15:15:43 8 representation of this case.

15:15:45 9 BY MR. DAVENPORT:

15:15:45 10 Q. Okay. I am not asking any questions
15:15:46 11 about what was said between you and her. I just
15:15:49 12 asked after you saw that discrepancy on response to
15:15:52 13 question 19, did you contact your attorney to let
15:15:58 14 her know that you did not agree to the response on
15:16:02 15 number 19?

15:16:03 16 MS. HUGGINS: Form. And same objection.

15:16:04 17 MR. DAVENPORT: Are you going direct her to
15:16:07 18 not answer?

15:16:08 19 MS. HUGGINS: Was there -- was there a
15:16:08 20 correction or supplement made to that -- to the
15:16:11 21 response to question 19?

15:16:11 22 MR. DAVENPORT: This is my deposition. You
15:16:13 23 don't get to ask her the questions yet.

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15:16:16 1 MS. HUGGINS: She's going to -- she's going
15:16:18 2 to waive privilege if she answers that question the
15:16:18 3 way you've worded it.

15:16:18 4 BY MR. DAVENPORT:

15:16:22 5 Q. No, not -- I'm just simply asking when
15:16:23 6 you reviewed and saw that discrepancy -- here's a
15:16:26 7 question.

15:16:26 8 When you reviewed these interrogatories,
15:16:29 9 were you in the presence of your attorney?

15:16:31 10 A. Yes.

15:16:31 11 Q. Okay. Did you ever review these
15:16:34 12 interrogatories not in the presence of your
15:16:37 13 attorney?

15:16:37 14 A. Not that I could recall.

15:16:38 15 Q. Okay. So when you signed your
15:16:44 16 verification, did you sign your verification at the
15:16:48 17 same time that you were with your attorney?

15:16:50 18 A. Yes.

15:16:51 19 Q. Okay. Did you -- here's a question.
15:17:09 20 How do you receive notifications to meet
15:17:12 21 with your attorney?

15:17:13 22 A. It could either be through -- through
15:17:16 23 the department or in conversation.

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15:17:19 1 Q. Okay. Do you typically receive some
15:17:25 2 sort of notification?

15:17:26 3 A. Yes.

15:17:27 4 Q. Okay. How many times have you received
15:17:28 5 that notification?

15:17:29 6 MS. HUGGINS: Form.

15:17:30 7 THE WITNESS: I don't recall.

15:17:31 8 BY MR. DAVENPORT:

15:17:32 9 Q. Okay. Was it more than five?

15:17:35 10 MS. HUGGINS: Form.

15:17:36 11 THE WITNESS: Possibly, I'm not certain the
15:17:38 12 exact number.

15:17:38 13 BY MR. DAVENPORT:

15:17:39 14 Q. Okay. Did you receive a notification
15:17:46 15 for your deposition today?

15:17:49 16 A. I received a notification from my
15:17:52 17 attorney.

15:17:52 18 Q. Okay. Did you receive a notification
15:17:55 19 for your deposition that was scheduled for last
15:17:58 20 Wednesday?

15:17:59 21 A. From my attorney, yes.

15:18:00 22 Q. Okay. Aside from those two instances,
15:18:05 23 have you received notifications from your

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15:18:08 1 attorney --

15:18:11 2 MS. HUGGINS: Form.

15:18:11 3 BY MR. DAVENPORT:

15:18:12 4 Q. -- more or less than five times?

15:18:14 5 MS. HUGGINS: Form. What is the relevance
15:18:16 6 of how frequently you've met with an attorney on a
15:18:17 7 case?

15:18:17 8 MR. DAVENPORT: I'm trying to figure out
15:18:17 9 discovery compliance, Ms. Huggins, and it might be
15:18:19 10 subject to a motion later.

15:18:20 11 I'm just trying to make a record for
15:18:24 12 potential motion practice. You're now obstructing
15:18:27 13 my deposition and I would like the record to be
15:18:29 14 clear on exactly what compliance was with discovery
15:18:33 15 in this matter.

15:18:34 16 MS. HUGGINS: I'm instructing my client that
15:18:37 17 she is not to reveal the substance of any
15:18:37 18 conversations we've had with any --

15:18:37 19 BY MR. DAVENPORT:

15:18:41 20 Q. I haven't asked for the substance one
15:18:41 21 time.

15:18:42 22 How many times have you been contacted by
15:18:44 23 your attorney besides your deposition for last week

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15:18:47 1 and today?

15:18:49 2 MS. HUGGINS: Form.

15:18:51 3 BY MR. DAVENPORT:

15:18:52 4 Q. How many times have you received
15:18:53 5 notifications involving this proceeding to meet
15:18:56 6 with your attorney outside of last Wednesday and
15:18:58 7 today?

15:19:00 8 A. I don't recall.

15:19:01 9 Q. Was it more or less than five times?

15:19:04 10 A. I don't recall.

15:19:06 11 Q. Okay. When you meet, do you meet with
15:19:13 12 other defendants, or is it just you?

15:19:15 13 MS. HUGGINS: Form. And, again, now
15:19:16 14 that -- that does veer into attorney/client.

15:19:21 15 MR. DAVENPORT: Are you going to direct her
15:19:23 16 to not answer?

15:19:24 17 MS. HUGGINS: You can't ask her about what
15:19:27 18 happens during meetings with -- with her attorney.

15:19:29 19 MR. DAVENPORT: I didn't ask her about what
15:19:31 20 happened during the meeting, I just asked who was
15:19:33 21 present.

15:19:35 22 MS. HUGGINS: I don't think that that is a
15:19:36 23 proper question.

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15:19:38 1 MR. DAVENPORT: I'm just asking are you
15:19:41 2 going to direct her to not answer, because I'm
15:19:44 3 going to ask her the question.

15:19:52 4 MS. HUGGINS: Do you have authority that
15:19:55 5 supports that as a proper deposition question?

15:19:57 6 MR. DAVENPORT: I don't on me right now, but
15:19:59 7 I'm going to ask her, unless you direct her to not
15:20:03 8 answer.

15:20:11 9 MS. HUGGINS: I'm objecting to the form of
15:20:14 10 the question. I've obviously alerted to you that
15:20:18 11 my concerns are that this is breaching
15:20:21 12 attorney/client privilege.

15:20:22 13 Who -- who is present during -- during
15:20:24 14 meetings with attorneys I -- I do not think is
15:20:28 15 discoverable.

15:20:31 16 And, again, I'm reminding my client not
15:20:35 17 to -- to disclose any of the discussions we've had
15:20:35 18 during the course of any of those meetings.

15:20:39 19 You can answer to the best of your ability.

15:20:41 20 MR. DAVENPORT: Of course.

15:20:41 21 Can you please read back my last question.

15:20:44 22 (The above-requested question was then read
15:21:09 23 by the reporter.)

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15:21:09 1 BY MR. DAVENPORT:

15:21:10 2 Q. With your attorney. Are the other
15:21:13 3 defendants present when you went to go meet with
15:21:16 4 your attorney?

15:21:16 5 MS. HUGGINS: Form. You can answer.

15:21:18 6 THE WITNESS: I recall one time, at least
15:21:20 7 one time Officer McDermott was there, but she's the
15:21:23 8 only one that I recall ever being there.

15:21:25 9 BY MR. DAVENPORT:

15:21:26 10 Q. Thank you.

15:21:26 11 A. You're welcome.

15:21:28 12 Q. All right. I'm going to move on to the
15:21:31 13 video portion. Do you mind, can we get the lights
15:21:35 14 on it? Thank you.

15:21:47 15 So I'm going to show you what has been
15:21:50 16 marked as Exhibit 11 in this deposition. The last
15:21:54 17 four numbers are 5252.

15:21:54 18 (Playing video.)

15:22:20 19 Now, Ms. Velez, do you recognize the vehicle
15:22:23 20 that is depicted in this video?

15:22:25 21 A. Yes.

15:22:25 22 Q. Have you seen that vehicle before?

15:22:27 23 A. Yes.

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15:22:28 1 Q. And when did you see it?

15:22:29 2 A. 1/1 of 2017.

15:22:30 3 Q. Had you ever seen that vehicle before?

15:22:32 4 A. Not that I could recall.

15:22:34 5 Q. When you arrived at the scene, did

15:22:37 6 Ms. McDermott say that she had seen that vehicle

15:22:40 7 before?

15:22:40 8 A. Not that I could recall.

15:22:46 9 Q. Do you know who this individual is?

15:22:48 10 A. I do not.

15:23:38 11 Q. I am now showing you last four digits

15:23:45 12 1342 what has been marked as Exhibit 11 in this

15:23:49 13 deposition. What are the three numbers located on

15:23:51 14 the top of that police vehicle?

15:23:53 15 A. 532.

15:23:56 16 Q. Okay. Do you know who was driving that

15:23:59 17 car on January 1st of 2017?

15:24:04 18 A. I don't recall who was driving it.

15:24:06 19 Q. Do you recall who was in that vehicle

15:24:08 20 that day?

15:24:09 21 A. Yes, Officer Kyle Moriarity and Carl

15:24:13 22 Schulz.

15:24:14 23 Q. Do you remember what either of them

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15:24:17 1 were wearing that day, aside from their police
15:24:21 2 uniform?

15:24:22 3 A. I believe Kyle had a hat on.

15:24:31 4 Q. Now, the police officer that is walking
15:24:33 5 over to this individual on the sidewalk, is he
15:24:36 6 wearing a hat?

15:24:37 7 A. It appears to be so.

15:24:40 8 Q. Would you believe that that's Kyle
15:24:42 9 Moriarity?

15:24:42 10 A. Yes.

15:24:46 11 Q. Now, assuming that -- well, let's turn
15:24:50 12 to the complaint summary report that I provided
15:24:54 13 you, it should be Exhibit 3. It might be closer to
15:25:13 14 the bottom.

15:25:16 15 A. Okay.

15:25:17 16 Q. So what was the call that Officer
15:25:21 17 Schulz and Officer Moriarity were responding to?

15:25:25 18 A. Larceny/theft.

15:25:28 19 Q. Okay. So based on the knowledge that
15:25:32 20 the call they were responding to was a larceny or
15:25:35 21 theft, what do you think Officer Moriarity is doing
15:25:39 22 right here?

15:25:39 23 A. I can't speculate as to what he's

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15:25:42 1 doing.

15:25:42 2 Q. In your role as a police officer what
15:25:44 3 would you do speaking to a complainant who is
15:25:49 4 complaining of a larceny or a theft?

15:25:50 5 MS. HUGGINS: Form.

15:25:51 6 THE WITNESS: It depends on the type of
15:25:53 7 call, what he's complaining of a theft of, if -- if
15:25:55 8 we have time for questions, if it's something we
15:25:55 9 need to act on immediately, then we would proceed a
15:25:58 10 little quicker, but initially you're fact finding,
15:26:02 11 who, what, when, how, what's missing, what's going
15:26:06 12 on.

15:26:06 13 BY MR. DAVENPORT:

15:26:06 14 Q. Okay. Now, during your investigation
15:26:08 15 would you ask for any sort of identification of
15:26:11 16 this individual?

15:26:12 17 MS. HUGGINS: Form.

15:26:12 18 A. Depending on if I'm familiar --

15:26:14 19 MR. DAVENPORT: I would ask what's the form
15:26:16 20 objection?

15:26:16 21 MS. HUGGINS: You're asking a hypothetical
15:26:18 22 question of this individual who appears to be on a
15:26:21 23 video where this lieutenant is not pictured on that

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15:26:25 1 video. She's already indicated in previous
15:26:28 2 testimony that they weren't there at this point.
15:26:31 3 It's a hypothetical question, it calls for
15:26:35 4 speculation.

15:26:35 5 MR. DAVENPORT: I would just ask what's
15:26:36 6 wrong with a hypothetical or a speculative answer
15:26:38 7 in a deposition?

15:26:39 8 MS. HUGGINS: That is not a proper question.
15:26:43 9 I am -- I am preserving a form objection. If you
15:26:46 10 would like to reword your question so it's not
15:26:49 11 speculative and it's possibly admissible later and
15:26:50 12 you may be able to use it later, you may.

15:26:55 13 But I am -- I am preserving a form
15:26:57 14 objection. I -- she is answering your question,
15:27:00 15 your deposition is proceeding.

15:27:00 16 BY MR. DAVENPORT:

15:27:01 17 Q. Sure. So would it also be true that
15:27:04 18 somebody can ask that -- a question during a
15:27:07 19 deposition that wouldn't be --

15:27:07 20 MS. HUGGINS: Sir, I'm not going to debate
15:27:09 21 how to -- how to --

15:27:09 22 MR. DAVENPORT: It's your form objection, so
15:27:11 23 I would like to know and I would like to try to fix

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15:27:14 1 it if, you know, we can sort that out.

15:27:16 2 **MS. HUGGINS:** For the benefit of the
15:27:17 3 reporter I would appreciate it if you don't speak
15:27:17 4 over me.

15:27:21 5 You asked me what the basis of my form
15:27:22 6 objection was and I told you. If you want to
15:27:25 7 reword the question, you may. If you don't, she's
15:27:27 8 going to be permitted to answer the question.

15:27:30 9 I did not tell her that she could not answer
15:27:32 10 the question.

15:27:32 11 **BY MR. DAVENPORT:**

15:27:32 12 **Q.** Okay. So, Ms. Velez, would -- as part
15:27:36 13 of investigating a theft or burglary, would you ask
15:27:41 14 the complainant for some sort of identification?

15:27:45 15 **A.** It depends on if I'm familiar with that
15:27:47 16 person. I may already know it or I could ask for
15:27:48 17 identification, depending on what part of the
15:27:52 18 investigation we're in.

15:27:52 19 It's not typical that as soon as you walk up
15:27:55 20 to someone you say can I have your license or can I
15:27:57 21 have a ident -- a form of identification.

15:27:59 22 Sometimes you just -- you have to ease into
15:28:01 23 an investigation. They're some -- they're usually

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15:28:04 1 upset, they have a complaint.

15:28:06 2 So at some point, yes, if I'm not familiar
15:28:10 3 with the person, I will ask for identification, but
15:28:11 4 it doesn't necessarily -- it doesn't necessarily
15:28:12 5 have to be instantaneous as soon as I arrive.

15:28:16 6 Q. But you would expect at some point some
15:28:17 7 officer would ask for identification?

15:28:19 8 A. Again, if I wasn't familiar or if the
15:28:21 9 officer wasn't familiar with the person who makes
15:28:23 10 the complaint, yes.

15:28:25 11 Q. Okay. Now, as part of your
15:28:30 12 investigation, would you also run the license plate
15:28:33 13 on that vehicle?

15:28:34 14 A. If I didn't have a -- if the license
15:28:36 15 plate wasn't part of my investigation, not
15:28:39 16 necessarily.

15:28:40 17 Q. Okay. When would the license plate be
15:28:43 18 part of the investigation?

15:28:44 19 A. If based on the investigation it's
15:28:46 20 deemed to be part of the investigation.

15:28:48 21 Q. Okay. At any point was there any
15:28:52 22 discussion about what's this burglary or theft call
15:28:56 23 related to?

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15:28:56 1 A. Pardon?

15:28:57 2 Q. At any point was there any discussion
15:28:59 3 between you and the other officers about what this
15:29:02 4 burglary or theft call what this person's complaint
15:29:06 5 was?

15:29:06 6 A. I don't recall having a conversation
15:29:08 7 with the officers about it.

15:29:09 8 Q. Okay. Did you ever have a conversation
15:29:11 9 with the complainant?

15:29:12 10 A. No.

15:29:12 11 Q. Okay. Did Officer McDermott ever have
15:29:14 12 a conversation with the complainant?

15:29:17 13 A. I don't recall.

15:29:17 14 Q. Now, is that your police vehicle that
15:29:21 15 Ms. McDermott was driving that just arrived on the
15:29:24 16 scene?

15:29:24 17 A. Yes.

15:29:25 18 Q. Okay. And that was because
15:29:27 19 Ms. McDermott was familiar with this 33 Schmarbeck
15:29:30 20 location?

15:29:31 21 A. Yes.

15:29:37 22 Q. So, now, I see that you're a little bit
15:29:41 23 behind Officer Schulz's and Officer Moriarity's

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15:29:45 1 police vehicle. Is there any specific reason why

15:29:48 2 Ms. McDermott parked her vehicle behind Officer

15:29:51 3 Moriarity and Officer Schulz's police vehicle?

15:29:55 4 A. You would --

15:29:55 5 MS. HUGGINS: Form.

15:29:56 6 THE WITNESS: You would have to ask Officer

15:29:59 7 McDermott that. I'm not certain.

15:30:00 8 BY MR. DAVENPORT:

15:30:00 9 Q. Okay. Would there be any reason why
15:30:02 10 you as a police officer would park behind Officer

15:30:06 11 Schulz and Officer Moriarity's police vehicle?

15:30:08 12 A. It depends on the situation, the type
15:30:10 13 of call. It possibly could be tactical. It
15:30:14 14 depends on what we're responding to.

15:30:16 15 Q. Okay. Based on what you have seen in
15:30:16 16 this -- in this video, would there be any reason
15:30:19 17 why you would park your police vehicle behind
15:30:21 18 Officer Moriarity and Officer Schulz's police
15:30:23 19 vehicle?

15:30:24 20 A. No particular reason.

15:30:30 21 Q. Officer Moriarity, was he in training
15:30:33 22 at this time?

15:30:33 23 A. Yes.

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15:30:34 1 Q. Field training?

15:30:36 2 A. Yes.

15:30:36 3 Q. Okay. What do you think that he is
15:30:40 4 discussing with Officer Schulz?

15:30:43 5 MS. HUGGINS: Form.

15:30:43 6 THE WITNESS: I don't know.

15:30:45 7 BY MR. DAVENPORT:

15:30:45 8 Q. Okay. Have you ever done field
15:30:46 9 training for any police officers in C District?

15:30:49 10 A. I've never been a field training
15:30:52 11 officer, no.

15:30:52 12 Q. Okay. As a lieutenant, what would you
15:30:55 13 expect a field training officer to be discussing
15:30:57 14 with their trainee in this situation?

15:31:00 15 MS. HUGGINS: Form.

15:31:00 16 THE WITNESS: Again, I have never been
15:31:03 17 trained as a field training officer, so I don't
15:31:06 18 know what that field training officer has been
15:31:10 19 trained to discuss or do or the -- the steps that
15:31:17 20 they would take to ensure that the trainee is
15:31:20 21 getting everything they need or how to respond to
15:31:25 22 questions that they may have. I don't know what
15:31:27 23 their training encompasses.

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15:31:28 1 BY MR. DAVENPORT:

15:31:29 2 Q. Okay. Now, if Officer Moriarity never
15:31:35 3 asked for the identification of this individual,
15:31:38 4 would you expect the field training officer to tell
15:31:41 5 Officer Moriarity to ask for that identification?

15:31:44 6 MS. HUGGINS: Form.

15:31:45 7 THE WITNESS: Can you repeat that?

15:31:46 8 BY MR. DAVENPORT:

15:31:47 9 Q. If Officer Moriarity never asked for
15:31:49 10 the identification of the complainant, would you
15:31:52 11 expect the field training officer to tell Officer
15:31:56 12 Moriarity to ask for the ID from that complainant?

15:32:00 13 MS. HUGGINS: Form.

15:32:01 14 THE WITNESS: Again, that would depend on
15:32:02 15 the scenario. I don't know what information
15:32:06 16 Officer Moriarity discussed with that person, if he
15:32:08 17 knows who it is, if he's already been identified,
15:32:13 18 if Officer Schulz identified him.

15:32:15 19 I don't know what they're discussing, so
15:32:15 20 I -- I couldn't say what I would expect him to do,
15:32:19 21 because I don't know what information they have
15:32:19 22 right now.

15:32:20 23 BY MR. DAVENPORT:

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15:32:22 1 Q. So if Officer Moriarity did not know
15:32:24 2 the individual and Officer Schulz did not ask the
15:32:27 3 individual for an identification, would you expect
15:32:29 4 Officer Schulz to tell Officer Moriarity to ask for
15:32:32 5 the identification of that individual?

15:32:33 6 MS. HUGGINS: Form.

15:32:34 7 MR. DAVENPORT: What's the form objection?

15:32:35 8 MS. HUGGINS: Same, it calls for -- it calls
15:32:36 9 for speculation.

15:32:37 10 MR. DAVENPORT: No, I'm asking in her
15:32:40 11 capacity as a lieutenant what would she
15:32:42 12 ask -- expect a field training officer to do.

15:32:42 13 MS. HUGGINS: You may disagree with my form
15:32:44 14 objection. I'm simply making it on the record.
15:32:46 15 I've not prevented her from answering that question
15:32:49 16 and I'm trying to do it in as minimal way as
15:32:51 17 possible as to not influence her testimony.

15:32:54 18 So I'm not going to debate with you my form
15:32:58 19 objections. You can proceed and ask her questions
15:33:00 20 if you would like.

15:33:00 21 MR. DAVENPORT: Well, I just want to make
15:33:01 22 sure that the record is clear exactly what your
15:33:02 23 objection is and then I can make my response to

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15:33:05 1 your objection.

15:33:06 2 MS. HUGGINS: No, I'm not debating you.

15:33:09 3 This is an officer's deposition, please proceed
15:33:11 4 with her deposition. I'm not going to debate you
15:33:12 5 right now.

15:33:13 6 MR. DAVENPORT: So just so --

15:33:15 7 MS. HUGGINS: You're distracting from your
15:33:15 8 own deposition.

15:33:17 9 MR. DAVENPORT: Just so that way we're
15:33:17 10 clear, Ms. Huggins, your objection is form,
15:33:19 11 speculation.

15:33:20 12 MS. HUGGINS: As I stated on the record.

15:33:22 13 MR. DAVENPORT: Okay. Can you please read
15:33:24 14 back the last question.

15:33:26 15 (The above-requested question was then read
15:34:21 16 by the reporter.)

15:34:21 17 THE WITNESS: I would -- again, with the
15:34:24 18 field training, I don't know that Officer
15:34:29 19 Schulz -- like, again, it's speculation and there's
15:34:32 20 a million different things that can happen while
15:34:34 21 investigating. At some point the identification of
15:34:38 22 the complainant would need to be made.

15:34:40 23 BY MR. DAVENPORT:

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15:34:41 1 Q. Okay. That works. Just at some point
15:34:43 2 identification would need to be made of that
15:34:46 3 individual, correct?

15:34:47 4 A. Correct.

15:34:47 5 (Playing video.)

15:34:47 6 Q. Okay. Now, Officer McDermott pulled
15:34:55 7 her vehicle up; do you see that?

15:34:57 8 A. Yes.

15:34:57 9 Q. Do you know why she pulled her vehicle
15:35:00 10 up?

15:35:00 11 A. It appears to speak to Officer
15:35:03 12 Moriarity.

15:35:03 13 Q. Okay. Do you have any idea what
15:35:07 14 Ms. McDermott said to Officer Moriarity?

15:35:09 15 A. I do not.

15:35:11 16 Q. Did you say anything to Officer
15:35:14 17 Moriarity?

15:35:14 18 A. Not that I could recall.

15:35:20 19 Q. Okay. So I'm now going to show you
15:35:30 20 what has been marked as Exhibit 11 with the last
15:35:35 21 four digits 2529.

15:35:38 22 So when did you first see or did you ever
15:35:41 23 see Mr. Kistner enter the street?

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15:35:45 1 A. I did not ever see him enter the
15:35:48 2 street.

15:35:48 3 Q. Okay. Did you ever see Mr. Kistner
15:35:51 4 before he entered the street?

15:35:53 5 A. No.

15:35:53 6 Q. What were you doing at this incident?

15:35:56 7 A. I don't recall exactly what I was doing
15:35:59 8 at that moment.

15:35:59 9 Q. Okay. What -- were you looking forward
15:36:05 10 at this time?

15:36:08 11 A. I don't recall. I just know that I
15:36:13 12 didn't see him and I -- at all.

15:36:17 13 Q. Okay.

15:36:17 14 A. I don't recall seeing him at all.

15:36:19 15 Q. Okay. Did you hear Officer McDermott
15:36:22 16 say that she saw an individual out in the street?

15:36:26 17 A. Not that I could recall.

15:36:28 18 Q. Do you recall anything that was said by
15:36:32 19 Mr. Kistner to anybody while he was out in the
15:36:35 20 street?

15:36:35 21 A. No.

15:36:36 22 Q. Okay. Do you recall any of the
15:36:39 23 officers saying anything to Mr. Kistner while he

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15:36:42 1 was in the street?

15:36:43 2 A. No.

15:36:44 3 Q. Okay. Do you know, were you on your
15:36:55 4 way to go somewhere after this call prior to, you
15:36:59 5 know, the events that transpired shortly after?

15:37:03 6 A. Not that I could recall. After the
15:37:05 7 event?

15:37:05 8 Q. Well, do you recall, were you
15:37:10 9 dispatched to another location from Schmarbeck?

15:37:14 10 A. Well, from Schmarbeck we did go to
15:37:17 11 ECMC.

15:37:20 12 Q. Were you dispatched prior to any
15:37:23 13 collision between Mr. Kistner and a police vehicle?

15:37:26 14 MS. HUGGINS: Form. You can answer.

15:37:29 15 THE WITNESS: Prior to?

15:37:31 16 BY MR. DAVENPORT:

15:37:32 17 Q. Prior to -- well, after arriving at
15:37:35 18 Schmarbeck and prior to a collision that was made
15:37:38 19 with Mr. Kistner, were you and Officer McDermott
15:37:41 20 dispatched to any other location?

15:37:43 21 A. Not that I could recall.

15:37:44 22 Q. Okay. Do you know if Officer Schulz or
15:37:47 23 Officer Moriarity were dispatched to another

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15:37:50 1 situation?

15:37:50 2 A. I don't recall.

15:37:51 3 Q. Did you ever dispatch to Schmarbeck for
15:37:55 4 the 33 Schmarbeck call?

15:37:58 5 A. I didn't, no.

15:38:00 6 Q. Okay. Did Officer McDermott ever
15:38:03 7 dispatch in for the 33 Schmarbeck call?

15:38:06 8 A. Not that I could recall.

15:38:27 9 Q. Now, Ms. Velez, based on what you just
15:38:30 10 saw right there, was the police vehicle moving
15:38:33 11 after Mr. Kistner was struck?

15:38:36 12 A. It appeared to be so. Well, when
15:38:39 13 Mr. Kistner walked into the vehicle, it appears
15:38:41 14 from this angle of the video to slightly be moving
15:38:46 15 forward.

15:38:46 16 Q. Now, when you were in the police
15:38:48 17 vehicle, did you hear any sort of a noise that
15:38:52 18 indicated that a collision had been made?

15:38:53 19 MS. HUGGINS: Form. You can answer.

15:38:55 20 THE WITNESS: I did hear a noise.

15:38:57 21 BY MR. DAVENPORT:

15:38:57 22 Q. Okay. What sort of a noise was that?

15:38:59 23 A. It was like a -- it sounded like

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15:39:03 1 plastic, like a plastic break.

15:39:05 2 Q. Okay. At the time did you know --

15:39:09 3 A. It wasn't -- I'm sorry.

15:39:09 4 Q. No, it's okay. At the time did you
15:39:12 5 know what that was?

15:39:12 6 A. No.

15:39:13 7 Q. Okay. Did Officer McDermott say
15:39:17 8 anything after you heard that noise?

15:39:19 9 A. She did.

15:39:19 10 Q. What did she say?

15:39:21 11 A. Again, I don't recall if she said that
15:39:22 12 he had put himself into the vehicle or if he had
15:39:25 13 threw himself into the vehicle.

15:39:28 14 I don't remember which word was used, but
15:39:31 15 she stated that he had put himself into the
15:39:33 16 vehicle.

15:39:33 17 Q. Okay. Did she yell that, did she sound
15:39:37 18 excited when she said it?

15:39:39 19 A. I don't remember the exact tone.

15:39:40 20 Q. Okay. Did she say that before you
15:39:44 21 exited the vehicle?

15:39:44 22 A. Yes.

15:39:45 23 Q. Okay. At that time had you seen

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15:39:50 1 Mr. Kistner up until that point of Ms. McDermott
15:39:53 2 yelling that he either threw himself at the police
15:39:56 3 vehicle or -- I'm sorry, what was the other phrase
15:40:01 4 that she may have possibly said?

15:40:03 5 A. Put himself.

15:40:04 6 Q. Okay. So asking the question again.

15:40:07 7 At any point did you see Mr. Kistner before
15:40:10 8 Ms. McDermott said that Mr. Kistner threw himself
15:40:14 9 at the vehicle or put himself into the police
15:40:17 10 vehicle?

15:40:17 11 A. No.

15:40:18 12 Q. Okay. When was the first time that you
15:40:23 13 saw Mr. Kistner?

15:40:23 14 A. On the ground.

15:40:25 15 Q. Was he grabbing any part of his body?

15:40:29 16 A. No.

15:40:31 17 Q. Okay. Where was he positioned relative
15:40:33 18 to the car?

15:40:34 19 A. I recall him laying parallel to the
15:40:37 20 car.

15:40:38 21 Q. Okay. Was Mr. Kistner saying anything?

15:40:45 22 A. Not that I could recall.

15:40:47 23 Q. Did you say anything to Mr. Kistner?

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15:40:49 1 A. No.

15:40:50 2 Q. Okay. Did you perform any sort of a
15:40:55 3 physical assessment of Mr. Kistner or a physical
15:40:59 4 examination?

15:41:00 5 A. When I came around the car, the side of
15:41:03 6 the car, he was moving his body side to side, like
15:41:08 7 rolling side to side.

15:41:09 8 And that's what I could recall that he had
15:41:12 9 the ability to move. Like he had the ability to --
15:41:15 10 to move his arms and legs and his body.

15:41:18 11 Q. Okay. So what does that tell you if
15:41:20 12 he's able to move?

15:41:21 13 A. That he can move. Like it didn't
15:41:24 14 appear from the way he was moving that he had any
15:41:27 15 of his limbs were broken.

15:41:29 16 Q. Okay. Did you perform any sort of an
15:41:32 17 assessment to see if he had a head injury at that
15:41:35 18 time?

15:41:35 19 A. I did not.

15:41:36 20 Q. Okay. Do you know if any of the other
15:41:38 21 officers performed an assessment to see if he had a
15:41:41 22 head injury at that time?

15:41:42 23 A. I do not.

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15:41:42 1 Q. Do you know if Mr. Kistner ever
15:41:45 2 complained of a head injury at Schmarbeck Avenue?

15:41:47 3 A. Not that I could recall.

15:41:48 4 Q. Okay. So why was Mr. Kistner taken to
15:41:52 5 ECMC for a physical assessment?

15:41:54 6 A. For a medical evaluation.

15:41:55 7 Q. What were -- what did you expect them
15:41:57 8 to evaluate?

15:41:58 9 A. To clear him medically, to -- based on
15:42:01 10 him being on the ground rolling back and forth,
15:42:04 11 what I had seen.

15:42:05 12 Q. Okay. Did you have an expectation that
15:42:07 13 they would examine any certain part of his body?

15:42:10 14 A. I'm not a medical professional, so I
15:42:13 15 don't know exactly what -- what criteria they would
15:42:14 16 need to determine the extent of an evaluation.

15:42:18 17 Q. Is a medical examination required for
15:42:21 18 an individual who is on the ground after a
15:42:23 19 collision with a vehicle?

15:42:24 20 MS. HUGGINS: Form. You can answer.

15:42:26 21 THE WITNESS: It would depend. It would
15:42:31 22 depend on -- it could be a multitude of different
15:42:34 23 things.

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15:42:34 1 BY MR. DAVENPORT:

15:42:34 2 Q. Was a physical examination required in
15:42:37 3 this case?

15:42:37 4 A. Based on the officers stating that he
15:42:42 5 put himself into a vehicle and now he's on the
15:42:45 6 ground, it would make sense to have him medically
15:42:49 7 cleared, evaluated.

15:42:49 8 Q. Okay. Was there any sort of a
15:42:52 9 discussion amongst the officers about potential
15:42:55 10 injuries that Mr. Kistner may have had?

15:42:57 11 A. Not that I could recall.

15:42:59 12 Q. Did anybody ever ask Mr. Kistner if
15:43:01 13 anything was hurting him?

15:43:02 14 A. I did not.

15:43:03 15 Q. Did any of the other officers?

15:43:04 16 A. I don't know.

15:43:05 17 Q. Not -- no one asked in your presence,
15:43:08 18 correct?

15:43:08 19 A. Correct.

15:43:08 20 Q. Okay. So, now, watching this vehicle
15:43:12 21 again -- or this video again.

15:43:16 22 A. Or I would say no one asked that I
15:43:22 23 could recall, because there was three other

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15:43:23 1 officers there.

15:43:24 2 Q. Sure. So I want you to watch this
15:43:27 3 video and pay particular attention to your and
15:43:32 4 Ms. McDermott's vehicle and Mr. Kistner as well.

15:43:32 5 (Playing video.)

15:43:32 6 BY MR. DAVENPORT:

15:43:41 7 Q. Did it appear to you that Mr. Kistner
15:43:44 8 intentionally threw himself at the vehicle?

15:43:46 9 A. Yes.

15:43:47 10 Q. And what led you to believe that?

15:43:49 11 A. I could -- it appears that he's
15:43:51 12 reaching his arm out into the vehicle.

15:43:54 13 Q. Would it be possible that he was trying
15:43:56 14 brace himself for a collision?

15:43:59 15 A. I can't speculate what he may have
15:44:02 16 thought. I only see what I see here and what was
15:44:05 17 told to me by officers.

15:44:07 18 Q. I guess I'm just asking is there an
15:44:07 19 alternative explanation for why Mr. Kistner may
15:44:07 20 have stuck his arm out for the police vehicle?

15:44:14 21 MS. HUGGINS: Form.

15:44:14 22 THE WITNESS: Again, in my opinion based on
15:44:16 23 the video and what was told to me by two other

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15:44:19 1 officers, no.

15:44:20 2 BY MR. DAVENPORT:

15:44:20 3 Q. So let's exclude anything that was told
15:44:24 4 to you by the other officers. Based on what you
15:44:27 5 see in this video, does it appear that Mr. Kistner
15:44:30 6 intentionally threw himself at the vehicle?

15:44:31 7 A. Unfortunately I can't take away my
15:44:33 8 thoughts on what was told to me and the video now.

15:44:39 9 In retrospect I can't -- what I see and what
15:44:39 10 I've been told is the totality of what my opinion
15:44:42 11 is based on.

15:44:43 12 Q. How much of your opinion is based on
15:44:45 13 what you see in this video? Again, does it look as
15:44:54 14 if Mr. Kistner intentionally threw himself at that
15:44:58 15 police vehicle?

15:44:58 16 MS. HUGGINS: Form.

15:45:00 17 THE WITNESS: Again, from my perspective
15:45:02 18 this -- the perception of this video -- the angle
15:45:05 19 of this video is difficult.

15:45:06 20 But as I said, my opinion on what -- what I
15:45:11 21 can see on here he appears to reach into the
15:45:14 22 vehicle.

15:45:14 23 BY MR. DAVENPORT:

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15:45:14 1 Q. Does it at least appear questionable
15:45:15 2 that Mr. Kistner may have not intentionally thrown
15:45:18 3 himself at a police vehicle?

15:45:19 4 MS. HUGGINS: Form.

15:45:19 5 THE WITNESS: Not from my perspective.

15:45:22 6 BY MR. DAVENPORT:

15:45:22 7 Q. Okay. If it was questionable whether
15:45:24 8 an individual threw himself at a police vehicle or
15:45:27 9 if the police vehicle negligently struck him, would
15:45:30 10 you expect there to be an investigation?

15:45:32 11 A. Can you repeat that.

15:45:33 12 Q. If there was a question as to whether
15:45:36 13 the police vehicle negligently struck the
15:45:39 14 individual or if the individual intentionally threw
15:45:41 15 himself at the police vehicle, would you expect
15:45:43 16 there to be an investigation by the accident
15:45:46 17 investigation unit?

15:45:46 18 A. That's speculative as well. There's a
15:45:50 19 lot of ifs in there. So when we have two officers
15:45:53 20 who witnessed the event that I have knowledge of at
15:46:00 21 that point, no.

15:46:01 22 If a pedestrian is struck by a vehicle, it's
15:46:05 23 a different -- different scenario and yes.

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15:46:08 1 Q. Okay. So I understand what these
15:46:13 2 police officers told you at the scene, but I guess
15:46:17 3 taking yourself away from what this video is, if
15:46:22 4 there is a question at the scene as to whether an
15:46:25 5 officer observed a police vehicle negligently
15:46:29 6 striking an individual or another police officer
15:46:32 7 saying that that individual threw himself at the
15:46:35 8 police vehicle, would you expect there to be an
15:46:38 9 investigation --

15:46:38 10 MS. HUGGINS: Form.

15:46:39 11 BY MR. DAVENPORT:

15:46:39 12 Q. -- of that situation?

15:46:42 13 A. As a patrol officer, I would defer to
15:46:45 14 the supervisor and give them all the information we
15:46:48 15 have and let them determine whether or not accident
15:46:53 16 investigation needs to come out or what type of
15:46:55 17 investigation would need to -- need to be done, if
15:46:57 18 any.

15:46:58 19 Q. As a supervisor, if you had one of your
15:47:00 20 police officers in C District telling you that the
15:47:02 21 individual intentionally threw himself at the
15:47:04 22 police vehicle and you had another police officer
15:47:08 23 who was at the scene who said that the police

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15:47:09 1 vehicle negligently struck the individual, would
15:47:12 2 you order an investigation of that situation?

15:47:14 3 MS. HUGGINS: Form.

15:47:17 4 THE WITNESS: You have two sworn officers
15:47:18 5 giving two different version of events, I would
15:47:20 6 come to the scene to determine what type of
15:47:22 7 investigation had been conducted at that point to
15:47:24 8 determine what fact pattern we have and then make a
15:47:27 9 decision.

15:47:27 10 BY MR. DAVENPORT:

15:47:28 11 Q. But you would go to the scene, correct?

15:47:30 12 A. Yes.

15:47:30 13 (Playing video.)

15:47:30 14 Q. Okay. Do you know who this individual
15:47:42 15 is who's on the sidewalk and now appearing to run
15:47:45 16 towards the street?

15:47:46 17 A. I believe that's Mr. Kistner's son.

15:47:48 18 Q. And what led you to believe that that
15:47:51 19 was Mr. Kistner's son?

15:47:52 20 A. Because I recall him being there.

15:47:54 21 Q. Did he say anything to you that would
15:47:58 22 have made you think that this was Mr. Kistner's
15:47:59 23 son?

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15:47:59 1 A. I believe he was yelling, not to me
15:48:01 2 specifically, but I believe he was yelling dad.

15:48:04 3 Q. Okay. Did you hear him make those
15:48:08 4 statements?

15:48:08 5 A. I heard him say dad, I believe it was
15:48:11 6 dad.

15:48:12 7 Q. Okay.

15:48:13 8 A. Not at this point, but when we were
15:48:16 9 obviously out of the vehicle.

15:48:18 10 Q. Now, you saw yourself exit the police
15:48:22 11 vehicle there, correct?

15:48:24 12 A. Yes.

15:48:24 13 Q. At this time, did you know that there
15:48:29 14 was an individual who was lying on the ground next
15:48:32 15 to a police vehicle?

15:48:33 16 A. Yes.

15:48:33 17 Q. Okay. And how did you know that?

15:48:35 18 A. Because when I heard the noise, Officer
15:48:38 19 McDermott had said he had -- like I said, I can't
15:48:41 20 remember the exact verbiage he put himself or threw
15:48:44 21 himself into the vehicle, so I -- I knew he was
15:48:46 22 there.

15:48:47 23 Q. Okay. As you're exiting the police

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15:48:49 1 vehicle, what -- what are you going to go do at
15:48:53 2 this situation?

15:48:55 3 A. I'm going to see what happened.

15:48:57 4 Q. Are you going to go examine the
15:49:00 5 individual on the ground?

15:49:01 6 A. I went around and -- visual and I --
15:49:08 7 oh, I'm sorry. I went -- I was going to go around
15:49:10 8 to do a visual to see what had happened.

15:49:12 9 Q. Okay. Now, at this time, did you see
15:49:19 10 the individual who you've identified as
15:49:23 11 Mr. Kistner's son?

15:49:24 12 A. I don't know if I seen him at that
15:49:27 13 point. He walked past me, but I don't know if I
15:49:30 14 made eye -- you know what I mean, if I had made eye
15:49:33 15 contact with him at that point.

15:49:34 16 Q. Were you ever concerned about that
15:49:36 17 individual at any point when you saw him run past
15:49:40 18 your police vehicle?

15:49:42 19 A. As I said, I don't -- at that moment I
15:49:49 20 don't exactly recall if I had made eye contact with
15:49:53 21 him as he went by.

15:49:53 22 Q. At any point when Mr. Kistner's son was
15:49:56 23 out in the street, did you ever feel concern for

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15:49:58 1 your safety?

15:49:59 2 A. At that point?

15:50:01 3 Q. Well, at any point that Mr. Kistner's
15:50:04 4 son was out in the street, did you ever feel that
15:50:08 5 your safety was threatened?

15:50:10 6 A. Not that I could recall.

15:50:23 7 Q. Now, knowing at that time that there
15:50:27 8 was an individual where there was a collision with
15:50:30 9 the police vehicle and that he was on the ground,
15:50:33 10 why did you not -- it appears that you're walking,
15:50:37 11 you're standing still, you're looking at Officer
15:50:41 12 Schulz and Officer Moriarity, did you have any
15:50:44 13 concern for the individual's potential physical
15:50:46 14 condition at that time?

15:50:47 15 A. Well, as I was looking at Officer
15:50:50 16 Schulz, he as he was walking toward me, as I was
15:50:53 17 coming around the front of the car, that's when he
15:50:55 18 told me I had seen the whole thing. He said I had
15:50:57 19 seen him throw himself into the patrol vehicle.

15:51:01 20 Q. And that was Officer Schulz that told
15:51:04 21 you that?

15:51:05 22 A. Yes.

15:51:05 23 Q. Okay. Did Officer Moriarity say

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15:51:09 1 anything at that time?

15:51:10 2 A. Not that I could recall.

15:51:14 3 Q. Okay. So Officer Schulz would have
15:51:17 4 made that statement to you. Was it at this point
15:51:17 5 right here where it appears that you're facing
15:51:35 6 Officer Schulz and Officer Moriarity that that
15:51:35 7 statement was made to you?

15:51:36 8 A. Most likely, yes.

15:51:38 9 Q. Okay. So now you've had two officers
15:51:42 10 that have told you that Mr. Kistner intentionally
15:51:45 11 threw himself at the police vehicle, correct?

15:51:47 12 A. Correct.

15:51:47 13 Q. Okay. So with that knowledge, what
15:51:51 14 steps would you take knowing that there's an
15:51:55 15 individual on the ground?

15:51:56 16 A. Well, having that information now and
15:51:59 17 when I come around the car, I see the individual.
15:52:01 18 The two officers who had actually eye witnessed the
15:52:06 19 incident, they're -- they're there.

15:52:09 20 So I have no -- aside from what they told me
15:52:13 21 at that point, I didn't observe anything, so they
15:52:13 22 would have more information and they would know
15:52:17 23 better how to proceed than I would, because I

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15:52:18 1 didn't see it.

15:52:19 2 Q. If you have two officers that are
15:52:21 3 telling you that somebody intentionally threw
15:52:24 4 themselves at a police vehicle, is that a crime to
15:52:27 5 throw yourself at a police vehicle?

15:52:29 6 A. It could be.

15:52:30 7 Q. Okay. Would you arrest that
15:52:31 8 individual?

15:52:32 9 A. Depending on the totality of the
15:52:35 10 circumstance.

15:52:35 11 Q. Would you detain that individual?

15:52:37 12 A. Yes.

15:52:37 13 Q. Okay. Would you detain that individual
15:52:39 14 and then determine the totality of the
15:52:42 15 circumstances?

15:52:42 16 A. It depends on the information that we
15:52:42 17 have.

15:52:45 18 Q. Is that what you did in this situation?

15:52:48 19 A. In this situation we had information.
15:52:50 20 Like I said, we had two officers witness what was
15:52:53 21 told to me that this individual threw himself into
15:52:56 22 the vehicle and we had damage to the vehicle. So,
15:52:59 23 yes, he was detained.

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15:53:12 1 (Playing video.)

15:53:12 2 Q. Now, it appears that there's you,
15:53:16 3 Officer Schulz, and Officer Moriarity. You were
15:53:19 4 all around the individual at this point. Was
15:53:22 5 anything being said to Mr. Kistner?

15:53:25 6 A. I don't recall.

15:53:26 7 Q. Did anybody tell Mr. Kistner to get up?

15:53:29 8 A. I don't recall.

15:53:30 9 Q. Did you tell Mr. Kistner to get up?

15:53:32 10 A. I did not.

15:53:33 11 Q. Did anybody tell Mr. Kistner that he
15:53:36 12 would be arrested?

15:53:37 13 A. I don't recall.

15:53:38 14 Q. Did you tell Mr. Kistner that he would
15:53:40 15 be arrested?

15:53:41 16 A. I did not.

15:53:58 17 Q. Now, it appears that either Officer
15:54:00 18 Schulz or Officer Moriarity are reaching down. Are
15:54:07 19 they picking up Mr. Kistner at that point?

15:54:09 20 A. I don't recall.

15:54:09 21 Q. Was Mr. Kistner ever brought into a
15:54:13 22 seated position?

15:54:13 23 A. I don't recall.

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15:54:15 1 Q. If an individual has been struck on
15:54:17 2 their head, would you examine that individual for a
15:54:21 3 head injury while he's lying down on the ground or
15:54:24 4 while he's in a seated position?

15:54:25 5 A. If I had -- that's -- again, it's
15:54:27 6 situational, it's circumstantial.

15:54:30 7 Q. Assuming that there's a potential for a
15:54:32 8 head injury, should that individual be brought to a
15:54:36 9 seated position?

15:54:37 10 MS. HUGGINS: Form.

15:54:37 11 THE WITNESS: Again, that depends on their
15:54:39 12 physical abilities, capabilities, if there's a
15:54:39 13 visible injury, if there's a complaint, if we can
15:54:42 14 see blood, it depends.

15:54:43 15 BY MR. DAVENPORT:

15:54:43 16 Q. But what if -- what if there's an
15:54:46 17 internal injury, should that individual be brought
15:54:49 18 to a seated position?

15:54:50 19 A. I'm not a medical --

15:54:50 20 MS. HUGGINS: Form.

15:54:50 21 THE WITNESS: -- professional.

15:54:53 22 BY MR. DAVENPORT:

15:54:53 23 Q. Do they give you any sort of training

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15:54:56 1 on how to handle these situations?

15:54:57 2 A. We have first aid.

15:54:59 3 Q. Okay. During your first aid training
15:54:59 4 did they ever discuss how to handle an individual
15:55:01 5 who may have an internal head injury while lying
15:55:04 6 down on the ground?

15:55:04 7 A. Yes.

15:55:05 8 Q. Okay. And what do they teach you?

15:55:07 9 A. If we know that they -- they have an
15:55:11 10 injury, they've expressed to us that they have some
15:55:15 11 type of injury that they believe they're immobile
15:55:16 12 and they cannot move, something of that nature,
15:55:17 13 then we would not move them.

15:55:20 14 Q. Okay. Now, if that person has
15:55:22 15 expressed to you that they have a head injury and
15:55:26 16 they're still rolling down on the ground, would you
15:55:30 17 bring that person into a seated position?

15:55:31 18 A. It depends on their physical
15:55:35 19 capabilities, abilities. If we ask them to and
15:55:38 20 they can, it depends.

15:55:40 21 Q. Okay. Was -- were handcuffs put on
15:55:45 22 Mr. Kistner by any of the officers?

15:55:47 23 A. I believe so.

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15:55:48 1 Q. And who put those handcuffs on

15:55:51 2 Mr. Kistner?

15:55:51 3 A. I do not recall.

15:55:52 4 Q. Okay. How was Mr. Kistner handcuffed,
15:55:55 5 was he handcuffed while he was sitting down, while
15:55:59 6 he was laying down on the ground?

15:56:00 7 A. I don't recall.

15:56:01 8 Q. Was he handcuffed while he was standing
15:56:04 9 up?

15:56:04 10 A. I don't recall.

15:56:05 11 Q. How was Mr. Kistner brought from a
15:56:07 12 seated position to a standing position?

15:56:07 13 A. I don't recall how Mr. Kistner was
15:56:09 14 brought up.

15:56:09 15 Q. Did you bring --

15:56:10 16 A. If he was.

15:56:11 17 Q. Did you bring Mr. Kistner into -- from
15:56:13 18 a seated position to a standing position?

15:56:16 19 A. I did not.

15:56:17 20 Q. Do you recall who did bring Mr. Kistner
15:56:20 21 from a seated position to a standing position?

15:56:20 22 A. I don't recall what officer handcuffed
15:56:22 23 him or how he was brought up. I'm not certain.

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15:56:25 1 Q. Now, at any point during this was there
15:56:33 2 any discussion that was had between any of the
15:56:36 3 officers at this point about what just happened?

15:56:38 4 A. I don't recall.

15:56:40 5 Q. Did Mr. Kistner say anything to any of
15:56:42 6 the officers?

15:56:43 7 A. I don't recall.

15:56:48 8 Q. Was he being belligerent?

15:56:51 9 A. I don't recall.

15:56:54 10 Q. What was Mr. Kistner's son saying at
15:56:58 11 this point?

15:56:58 12 A. I don't know.

15:57:01 13 Q. Based on where is he positioned, is he
15:57:04 14 in the police scene?

15:57:06 15 A. Pardon?

15:57:07 16 Q. Based on where Mr. Kistner's son is
15:57:10 17 located, is he within the police scene?

15:57:13 18 A. Well, they're in the midst of bringing
15:57:16 19 him over to the other vehicle, so it's technically
15:57:21 20 part of where we were working.

15:57:27 21 Q. Where Mr. Kistner's son is standing is
15:57:29 22 part of where the officers are working?

15:57:29 23 A. Well, they're going to go past that

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15:57:32 1 area, so technically for right now as
15:57:33 2 they're -- they're moving this individual, that's
15:57:35 3 our -- our workable area.

15:57:36 4 So the scene where the incident happened is
15:57:38 5 where the patrol car is, but we're still in control
15:57:41 6 of everything happening while we have someone in
15:57:45 7 our custody and make sure they safely get to where
15:57:48 8 they need to go.

15:57:49 9 Q. Okay. Is Mr. Kistner's son doing
15:57:52 10 anything threatening at this point?

15:57:54 11 A. I can't see exactly what he's doing.
15:57:54 12 His back is facing me right now --

15:57:54 13 Q. Does it appear from the video --

15:57:58 14 A. -- from this video.

15:57:58 15 Q. -- that Mr. Kistner's son is doing
15:58:00 16 anything threatening at this point?

15:58:01 17 A. I can't speculate what he's doing that
15:58:05 18 I cannot see.

15:58:08 19 Q. But you agree that you can't see
15:58:10 20 anything that is threatening any of the officers,
15:58:14 21 correct?

15:58:14 22 A. Again, I don't know what he's doing or
15:58:19 23 saying, if he's saying or doing anything, because I

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15:58:24 1 can't tell and I don't recall.

15:58:24 2 Q. Sure. Do you see Mr. Kistner's son's
15:58:28 3 right hand?

15:58:29 4 A. I do.

15:58:30 5 Q. Okay. And is it positioned where his
15:58:34 6 hand is on the right side of his face?

15:58:39 7 A. Yes.

15:58:40 8 Q. Okay. What do you think he's doing?

15:58:46 9 MS. HUGGINS: Form.

15:58:47 10 THE WITNESS: I have no idea what he's
15:58:49 11 doing.

15:58:50 12 BY MR. DAVENPORT:

15:58:50 13 Q. When you hold a cell phone, do you hold
15:58:53 14 it up next to your ear?

15:58:55 15 A. Yes.

15:58:56 16 Q. Is it possible that he has a cell phone
15:58:59 17 in his right hand and it's next to his ear?

15:59:02 18 MS. HUGGINS: Form.

15:59:03 19 THE WITNESS: It could be.

15:59:04 20 BY MR. DAVENPORT:

15:59:04 21 Q. Okay. Now, would there be any reason
15:59:09 22 for any of the officers to go speak with this
15:59:11 23 individual while he's on his cell phone?

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15:59:15 1 A. I don't know what the other officers,
15:59:17 2 what information they have, what they're observing,
15:59:21 3 if a conversation ensued that would cause them to.
15:59:23 4 I don't know.

15:59:23 5 Q. What kind of a conversation would ensue
15:59:25 6 where an officer would need to go speak with an
15:59:29 7 individual who's on his cell phone?

15:59:29 8 A. I don't know if he's engaging them
15:59:30 9 first. I don't know. It's speculation. It
15:59:32 10 depends on if he asked them to come over.

15:59:36 11 We have lots of times when people are on
15:59:37 12 their cell phone and they still want to talk to us.

15:59:40 13 They sometimes are still with 911 on the
15:59:41 14 phone and they want to talk to us. And we're like
15:59:42 15 we're here now, you can hang up the phone.

15:59:43 16 And so there's lots of times where we engage
15:59:46 17 and they're on their phone or they engage us and
15:59:48 18 they're on their phone.

15:59:48 19 Q. Do you recall any time where
15:59:50 20 Mr. Kistner's son asked to speak with a police
15:59:53 21 officer?

15:59:53 22 A. I don't recall.

15:59:53 23 Q. Okay. Do you know what officer is

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16:00:03 1 facing towards Mr. Kistner's son?

16:00:07 2 A. I believe that's Officer Schulz.

16:00:10 3 Q. Okay. Do you have -- do you know what
16:00:13 4 Mr. Schulz is saying to Mr. Kistner's son?

16:00:16 5 A. I do not.

16:00:24 6 Q. Now, at this time, does it appear that
16:00:26 7 Mr. Kistner's son is walking away from Mr. Schulz?

16:00:30 8 A. I can't tell, he's half off the video.

16:00:33 9 Q. He's not taking steps towards
16:00:37 10 Mr. Schulz, though, correct?

16:00:37 11 A. If you could back it up, I could see it
16:00:40 12 again.

16:00:40 13 Q. Sure?

16:00:42 14 A. Where he was moving to.

16:00:49 15 Q. At any time did he take steps towards
16:00:53 16 Mr. Schulz before he left the view of the camera?

16:00:55 17 A. He took a few steps to the right and
16:00:59 18 then I couldn't tell.

16:01:03 19 Q. Why would Officer Schulz be following
16:01:06 20 this individual at this point?

16:01:07 21 A. You would have to ask Officer Schulz.

16:01:15 22 Q. At this time, does it appear that
16:01:19 23 Mr. Kistner's son is voluntarily walking out into

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16:01:22 1 the street?

16:01:24 2 A. Possibly, I can't tell.

16:01:27 3 Q. Does it appear that Mr. Schulz has his
16:01:30 4 arm on Mr. Kistner's son?

16:01:32 5 A. There's a line through the middle. I
16:01:35 6 can't tell.

16:01:35 7 Q. I'll try to get rid of that.

16:01:39 8 Well, we'll just continue forward with the
16:01:43 9 video a little bit.

16:02:02 10 At this time, does it appear that Officer
16:02:04 11 Schulz's arm is on Mr. Kistner's son?

16:02:07 12 A. Yes.

16:02:07 13 Q. Okay. Do you think that Mr. Kistner's
16:02:09 14 son is voluntarily walking out into the street?

16:02:12 15 A. I'm not certain if he was voluntarily
16:02:16 16 or Officer Schulz is guiding him. I'm -- again,
16:02:19 17 I'm not -- I don't know the circumstance of what
16:02:21 18 was happening there.

16:02:28 19 Q. Now, at this time, does it appear that
16:02:31 20 Officer Schulz is controlling the movement of
16:02:33 21 Mr. Kistner's son?

16:02:35 22 A. It's off screen. I honestly can't
16:02:37 23 tell.

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16:02:38 1 Q. Does it appear that he has his right
16:02:40 2 hand and his left arm raised towards Mr. Kistner's
16:02:44 3 son?

16:02:44 4 A. I can't see that.

16:02:46 5 Q. We'll get another view of that.

16:02:49 6 A. Okay.

16:02:56 7 Q. What happened right there between
16:02:58 8 Mr. Kistner's son and Mr. Schulz?

16:03:00 9 A. It appears to be some type of furtive
16:03:03 10 movement, but I can't tell the specifics of what
16:03:06 11 happened, it's pixilated.

16:03:08 12 Q. Does it appear that there was some sort
16:03:11 13 of a struggle between the two of them?

16:03:13 14 A. Again, I would describe it as a furtive
16:03:18 15 movement. I can't -- based on with the pixilation
16:03:21 16 of the video, I can't say what exactly was
16:03:24 17 happening there and I don't recall.

16:03:26 18 Q. Okay. Does it appear that there's now
16:03:35 19 another officer who's put their hands on
16:03:39 20 Mr. Kistner's son?

16:03:40 21 A. Could you play it again?

16:03:42 22 Q. Sure. At any point, did you see
16:03:58 23 another officer put their hands on Mr. Kistner's

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16:04:01 1 son?

16:04:02 2 A. Yes.

16:04:02 3 Q. Okay. And would you -- how would you
16:04:06 4 describe what you just saw? Was there any sort of
16:04:11 5 resistance between Mr. Kistner's son and the
16:04:14 6 officers?

16:04:14 7 MS. HUGGINS: Form.

16:04:15 8 THE WITNESS: I -- I can't speculate as to
16:04:21 9 what was happening. I don't -- I don't recall.
16:04:27 10 And this view --

16:04:28 11 BY MR. DAVENPORT:

16:04:28 12 Q. Now, at this time, based on this view,
16:04:31 13 does it appear that you and Officer McDermott are
16:04:33 14 facing whatever is going on between Officer Schulz,
16:04:37 15 Officer Moriarity, and Mr. Kistner's son?

16:04:39 16 A. Yes.

16:04:39 17 Q. Okay. So at any time you and Officer
16:04:43 18 McDermott could have stopped what was transpiring
16:04:46 19 between Officer Schulz, Officer Moriarity, and
16:04:49 20 Mr. Kistner's son?

16:04:50 21 A. Could you repeat that?

16:04:52 22 Q. At any time you or Officer McDermott
16:04:54 23 could have stopped what was transpiring between

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16:04:57 1 Officer Schulz, Officer Moriarity, and

16:04:59 2 Mr. Kistner's son?

16:05:00 3 A. We were present. If we felt there was
16:05:03 4 a need to intervene, we could have, we were there.

16:05:06 5 Q. Okay. Do you recall what Mr. Kistner's
16:05:09 6 son looks like?

16:05:10 7 A. I don't.

16:05:11 8 Q. Do you remember his physical stature?

16:05:14 9 A. I don't.

16:05:15 10 Q. Was he a tall guy, a short guy?

16:05:18 11 A. I don't recall.

16:05:19 12 Q. Was he skinny or was he fat?

16:05:21 13 A. I believe he was more slender, but I
16:05:26 14 don't recall his exact physique.

16:05:29 15 Q. Was he taller or shorter than you?

16:05:32 16 A. I don't recall.

16:05:33 17 Q. How tall are you?

16:05:34 18 A. Five-two.

16:05:39 19 Q. Now, it appears that Officer Schulz is
16:05:44 20 radioing in from his shoulder radio; do you see
16:05:51 21 that?

16:05:51 22 A. Is he the one on the far -- I'm not
16:05:55 23 certain.

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16:05:55 1 MS. HUGGINS: Just ask for a replay.

16:05:57 2 THE WITNESS: Yeah, if you could just replay

16:05:58 3 it.

16:05:58 4 BY MR. DAVENPORT:

16:05:59 5 Q. Sure. Do you see that right there?

16:06:05 6 A. Yes.

16:06:06 7 Q. Does it appear that Officer Schulz is

16:06:09 8 radioing in?

16:06:09 9 A. It appears so, yes.

16:06:11 10 Q. Okay. Do you know what Officer Schulz

16:06:13 11 was radioing in at that point?

16:06:14 12 A. I do not.

16:06:15 13 Q. Okay. Was anything being said amongst

16:06:20 14 the officers?

16:06:22 15 A. I don't recall.

16:06:23 16 Q. Was anything being said to

16:06:26 17 Mr. Kistner's son?

16:06:26 18 A. I don't recall.

16:06:28 19 Q. Why was Mr. Kistner's son standing in

16:06:32 20 the street at this time?

16:06:32 21 A. I don't recall.

16:06:33 22 Q. Why would he have been standing in the

16:06:36 23 street at this time?

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16:06:36 1 A. I don't recall.

16:06:36 2 MS. HUGGINS: Form.

16:06:37 3 THE WITNESS: So I can't speculate.

16:06:39 4 BY MR. DAVENPORT:

16:06:45 5 Q. If there's an individual who is

16:06:47 6 invading a crime scene, would you have that

16:06:51 7 individual then stand where other officers can view

16:06:54 8 that person to detain them?

16:06:57 9 MS. HUGGINS: Form.

16:06:58 10 THE WITNESS: It depends on the situation.

16:07:00 11 BY MR. DAVENPORT:

16:07:01 12 Q. Was Mr. Kistner's son being detained at

16:07:04 13 this time?

16:07:04 14 A. He wasn't in my custody, so I'm not

16:07:08 15 certain. I don't recall what he was doing standing

16:07:10 16 there.

16:07:10 17 Q. Whose custody was he in?

16:07:13 18 A. I don't know if he was in anyone's

16:07:16 19 custody at that point. I'm not certain.

16:07:19 20 Q. Okay. I'm now going to show you what

16:07:22 21 has been marked as Exhibit 11 and the last four

16:07:25 22 numbers are 5233.

16:08:08 23 Now, it appears that there are now five

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16:08:10 1 police officers within the view of this video; do
16:08:10 2 you see that?

16:08:13 3 **A.** Yes.

16:08:13 4 **Q.** Who is that fifth police officer that
16:08:16 5 arrived at the scene?

16:08:16 6 **A.** Officer Dave Santana.

16:08:18 7 **Q.** Okay. Have you worked with Mr. Santana
16:08:19 8 in the past?

16:08:20 9 **A.** Yes.

16:08:21 10 **Q.** Have you ever ridden along with him in
16:08:24 11 the same police vehicle?

16:08:25 12 **A.** Not that I could recall.

16:08:26 13 **Q.** Okay. Do you know why Officer Santana
16:08:28 14 arrived at the scene that day?

16:08:30 15 **A.** I don't.

16:08:30 16 **Q.** Okay. Do you recall what he was saying
16:08:33 17 to you at this time?

16:08:34 18 **A.** I don't.

16:08:36 19 **Q.** Did he have any sort of a conversation
16:08:39 20 with Lieutenant McHugh before he arrived at the
16:08:47 21 scene?

16:08:47 22 **A.** I don't know.

16:08:47 23 **THE REPORTER:** Lieutenant who?

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16:08:47 1 BY MR. DAVENPORT:

16:08:47 2 Q. McHugh.

16:08:48 3 Did any of the officers at the scene have a
16:08:51 4 conversation with Lieutenant McHugh at the scene?

16:08:54 5 A. I believe so, yes.

16:08:55 6 Q. And which officers were they?

16:08:57 7 A. Officer McDermott and Schulz.

16:09:02 8 Q. Do you recall what was said --

16:09:04 9 A. I don't.

16:09:05 10 Q. -- to Mr. McHugh?

16:09:11 11 So after Mr. Kistner has been placed in the
16:09:15 12 back of the police vehicle, what sort of a
16:09:18 13 conversation would be had between officers in this
16:09:20 14 situation?

16:09:21 15 A. I don't recall what the conversation
16:09:23 16 was.

16:09:25 17 Q. Would there have been anything that you
16:09:28 18 would have had to have discussed at this point?

16:09:30 19 MS. HUGGINS: Form.

16:09:31 20 THE WITNESS: Possibly, but I don't recall.

16:09:34 21 BY MR. DAVENPORT:

16:09:41 22 Q. Did anybody -- at any point after the
16:09:44 23 complaint summary report was closed for 33

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16:09:49 1 Schmarbeck, did anybody go talk with that
16:09:53 2 complainant again while at the scene of Schmarbeck?

16:09:55 3 A. I'm not certain.

16:10:09 4 Q. Did you see that gesture that was just
16:10:12 5 made by the police officer who's closest to the
16:10:15 6 camera at this point?

16:10:16 7 A. No, could you back it up.

16:10:18 8 Q. Well, with my curser on this
16:10:21 9 individual, I just want you to focus on that
16:10:25 10 individual. Now, did you see his left hand right
16:10:25 11 there?

16:10:33 12 A. Uh-huh, yes.

16:10:34 13 Q. Okay. What sort of a gesture is he
16:10:37 14 making?

16:10:40 15 A. He moved his arm from left to right.

16:10:42 16 Q. Okay.

16:10:44 17 A. Or she. I don't know who that is.

16:10:46 18 Q. Was he discussing the incident at that
16:10:49 19 point?

16:10:49 20 A. I don't recall.

16:10:53 21 Q. At any point before you arrived at
16:10:56 22 ECMC, did you and the other officers discuss about
16:10:59 23 what you saw on Schmarbeck Avenue?

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16:11:03 1 A. Possibly, I just don't recall it. I
16:11:07 2 don't recall the content or the context of
16:11:11 3 the -- of the conversation.

16:11:11 4 Q. What's the physical stature of
16:11:14 5 Mr. Santana, is he a big guy?

16:11:17 6 A. He's taller than me.

16:11:20 7 Q. What's his weight, is he a skinny guy,
16:11:23 8 a bigger guy?

16:11:25 9 A. He's medium. I can't estimate his
16:11:25 10 weight.

16:11:25 11 Q. Okay.

16:11:30 12 A. I would say medium.

16:11:31 13 Q. How long has Officer Santana worked in
16:11:34 14 the C District?

16:11:35 15 A. I don't know.

16:11:36 16 Q. Has he worked continuously in the C
16:11:40 17 District since January 1st of 2017?

16:11:43 18 A. I believe so.

16:11:45 19 Q. Okay. Have you had any conversations
16:11:51 20 with Officer Santana since January 1st of 2017
16:11:55 21 regarding this incident?

16:11:58 22 A. Aside from scheduling and if he has
16:12:05 23 appearances coming up, no.

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16:12:06 1 Q. Okay. Have you had any discussions
16:12:08 2 with any of the officers in the City of Buffalo
16:12:12 3 Police Department regarding this incident with
16:12:15 4 Mr. Kistner?

16:12:15 5 A. Not that I could recall.

16:12:16 6 Q. No discussions were had after a news
16:12:20 7 report came out regarding this incident?

16:12:23 8 A. With other officers, not that I could
16:12:26 9 recall.

16:12:26 10 Q. That you were present for?

16:12:28 11 A. Correct.

16:12:28 12 Q. Okay. Now, it appears that you are all
16:12:34 13 dispersing at this point. Did you know that you
16:12:36 14 would be going to ECMC from Schmarbeck?

16:12:39 15 A. I believe so, yes.

16:12:41 16 Q. Why isn't Officer Santana going with
16:12:45 17 you guys -- with you officers to ECMC?

16:12:50 18 A. I -- I don't know. We wouldn't need
16:12:53 19 him to come with us, but I don't know exactly why
16:12:57 20 he didn't come.

16:12:58 21 Q. Okay. Why does it require four
16:13:00 22 officers to transport Mr. Kistner to ECMC?

16:13:03 23 A. Sometimes both cars will go up. It's

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16:13:07 1 not uncommon.

16:13:08 2 Q. Have you ever experienced that before
16:13:11 3 where two patrol vehicles are used to transport one
16:13:15 4 individual to ECMC besides January 1st of 2017?

16:13:19 5 A. Yes, I've seen it before.

16:13:20 6 Q. Have you ever participated, have you
16:13:22 7 ever been a passenger in that vehicle or driven a
16:13:26 8 vehicle where there's been more than one patrol car
16:13:29 9 to transport an individual?

16:13:30 10 A. Yes.

16:13:31 11 Q. Okay. How many times has that
16:13:31 12 happened?

16:13:31 13 A. I don't recall a specific number of
16:13:34 14 times.

16:13:34 15 Q. Is it more or less than five?

16:13:35 16 A. I would say more than five.

16:13:37 17 Q. Is it more or less than 10?

16:13:41 18 A. I -- I don't know. I don't recall. I
16:13:46 19 can't put an exact number on it.

16:13:48 20 Q. More or less than 20?

16:13:51 21 A. Possibly more. I've been on for about
16:13:54 22 seven years now, so.

16:13:55 23 Q. More or less than 50?

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16:13:57 1 A. Maybe, possibly less than 50.

16:14:00 2 Q. More or less than a hundred?

16:14:03 3 A. Possibly, possibly less.

16:14:08 4 Q. Okay. Is there any sort of a

16:14:23 5 circumstance that would -- that would indicate to

16:14:27 6 you as a police officer that more than one police

16:14:31 7 vehicle is required to transport an individual to

16:14:35 8 ECMC?

16:14:35 9 A. Could you repeat that?

16:14:36 10 Q. Is there anything that you would

16:14:38 11 observe as a police officer that would tell you

16:14:38 12 that more than one patrol vehicle is required to

16:14:41 13 transport an individual to ECMC?

16:14:43 14 A. Required, no. I mean, not required.

16:14:45 15 It would -- it depends, it's circumstantial.

16:14:47 16 Q. On January 1st of 2017 were two patrol

16:14:51 17 vehicles required to transport Mr. Kistner to ECMC?

16:14:54 18 A. Required, not that I can recall, no.

16:14:57 19 Q. So it would have been voluntary that

16:15:00 20 for one of the patrol vehicles to have gone to

16:15:04 21 ECMC?

16:15:04 22 A. Correct. But, again, I don't remember

16:15:06 23 the exact -- the -- the totality of that

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16:15:10 1 circumstance. I'm not certain at what
16:15:19 2 point -- like I said, sir, like in the -- in the
16:15:22 3 CAD call, primary -- primary officer was changed.
16:15:25 4 There are conversations that I don't recall
16:15:28 5 that were had with other officers. So at that
16:15:31 6 point I don't exactly recall why both cars went up.
16:15:34 7 It wouldn't have been required, but I don't
16:15:37 8 recall the exact reasoning for both cars going up,
16:15:40 9 but it's not completely uncommon.

16:15:43 10 Q. Is it more typical where the injuries
16:15:46 11 are more serious that two patrol vehicles would be
16:15:48 12 required to go to ECMC?

16:15:48 13 A. If injuries were deemed to be more
16:15:50 14 serious, an ambulance would have been required to
16:15:57 15 take somebody up. We wouldn't transport them.

16:16:00 16 And possibly too, depending on how many
16:16:05 17 people were there. It's circumstantial, it
16:16:06 18 depends.

16:16:06 19 Q. Under what circumstances would an
16:16:11 20 officer cancel an ambulance and drive that
16:16:15 21 individual to ECMC himself?

16:16:17 22 A. It would depend.

16:16:18 23 Q. In this situation why was an ambulance

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16:16:20 1 canceled and Mr. Kistner driven to ECMC by Officer
16:16:24 2 Schulz and Officer Moriarity?

16:16:24 3 A. You would have to ask the officer who
16:16:25 4 canceled the ambulance.

16:16:26 5 Q. Did you agree that an ambulance should
16:16:29 6 be canceled at that point?

16:16:31 7 A. I wasn't a part of that decision, so
16:16:34 8 and, again, I didn't witness the incident. And
16:16:36 9 other officers were present who did and that was
16:16:37 10 the determination that was made.

16:16:39 11 Q. If during your physical examination of
16:16:42 12 Mr. Kistner you deemed that an ambulance was
16:16:45 13 necessary to bring Mr. Kistner to ECMC, could you
16:16:48 14 have called for an ambulance?

16:16:49 15 A. Based on what I had observed, he was
16:16:53 16 moving, he was able to stand up, he walked over to
16:16:57 17 the patrol car, he sat down. So at that point he
16:17:01 18 was mobile and he was moving.

16:17:02 19 Q. Well, Ms. Velez --

16:17:04 20 A. He was conscious.

16:17:05 21 Q. Ms. Velez, my question was if you
16:17:08 22 deemed it necessary to call an ambulance when
16:17:11 23 another officer had canceled that ambulance, could

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16:17:14 1 you call and have that ambulance arrive?

16:17:17 2 A. If I deemed it necessary that he needed
16:17:20 3 an ambulance and another officer canceled the
16:17:24 4 ambulance, if I deemed it necessary, then I could
16:17:25 5 always call an ambulance.

16:17:26 6 Q. Okay. Do you know why Officer Schulz
16:17:29 7 or Officer Moriarity or Officer McDermott canceled
16:17:33 8 the ambulance?

16:17:33 9 A. I do not.

16:18:14 10 (Playing video.)

16:18:14 11 Q. Okay. Do you recognize the individual
16:18:15 12 who is now standing on the sidewalk on the left
16:18:18 13 part of the screen?

16:18:18 14 A. Yes.

16:18:18 15 Q. And who is that individual?

16:18:19 16 A. Mr. Kistner's son.

16:18:19 17 Q. Okay. Do you know who the officer is
16:18:22 18 who is now facing Mr. Kistner's son?

16:18:24 19 A. I believe that's Officer Schulz.

16:18:26 20 Q. Okay. Did you see Mr. Kistner's son
16:18:36 21 raise his left arm?

16:18:38 22 A. Could you play it back?

16:18:39 23 Q. Yes. Do you see Mr. Kistner's son

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16:19:03 1 raise his left arm?

16:19:04 2 A. Yes.

16:19:05 3 Q. Okay. Did he also take steps away from

16:19:08 4 Mr. Schulz?

16:19:08 5 A. Yes.

16:19:09 6 Q. Based on those two actions by

16:19:12 7 Mr. Kistner's son, do you think that he was looking

16:19:14 8 to speak with Mr. Schulz?

16:19:16 9 A. I don't know what he was doing.

16:19:18 10 Q. If an individual raises their left arm

16:19:21 11 and starts to walk away from you as a police

16:19:25 12 officer, do you think that that individual wants to

16:19:26 13 speak with you?

16:19:26 14 A. Possibly, they could. I don't know

16:19:28 15 what he's doing. There's -- he could be saying

16:19:32 16 wait a minute, hold on, I still want to talk. I

16:19:35 17 don't know. I don't recall.

16:19:35 18 Q. Would you follow that individual if

16:19:37 19 they took steps away from you and put their left

16:19:40 20 arm up and said wait a minute?

16:19:43 21 A. It depends.

16:19:46 22 Q. I'm sorry. Ms. Velez, can you watch

16:19:50 23 the video?

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16:19:51 1 A. Yes, I didn't know if you had more
16:19:54 2 questions.

16:19:54 3 Q. No, that was it.

16:20:23 4 Now, watching this video, it appears -- does
16:20:25 5 it appear that Mr. Kistner's son has his right arm
16:20:30 6 raised?

16:20:30 7 And I can go back, if you need me to.

16:20:32 8 A. No, I can see it. It appears that he
16:20:36 9 does have his right arm raised.

16:20:38 10 Q. Okay. And does it appear that his
16:20:40 11 right hand is on the right side of his face?

16:20:43 12 A. Yes.

16:20:44 13 Q. What would you expect Mr. Kistner's son
16:20:48 14 to be doing in this situation if his right arm is
16:20:48 15 raised to his face in that way?

16:20:51 16 A. He could be on the phone.

16:20:53 17 Q. Okay. Now, if Mr. Kistner's son is on
16:21:01 18 the phone, what reason would Mr. Schulz have to
16:21:05 19 grab Mr. Kistner's son and drag him back out into
16:21:09 20 the street?

16:21:09 21 MS. HUGGINS: Form.

16:21:10 22 THE WITNESS: You would have to ask Officer
16:21:15 23 Schulz about his interaction at that point.

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16:21:16 1 BY MR. DAVENPORT:

16:21:17 2 Q. Is there anything that Mr. Kistner's
16:21:19 3 son could have said on the phone that would have
16:21:22 4 caused Officer Schulz to drag him out into the
16:21:25 5 street?

16:21:25 6 A. I don't know.

16:21:25 7 Q. Have you ever encountered somebody
16:21:28 8 where you had to drag them out into the street
16:21:29 9 based on something that they said during a phone
16:21:29 10 call?

16:21:30 11 A. Me, personally?

16:21:32 12 Q. You, personally.

16:21:33 13 A. Not that I could recall.

16:21:34 14 Q. Okay. Now, at any time did it appear
16:21:45 15 that Mr. Kistner's son walked out there voluntarily
16:21:49 16 or was he guided out there by Mr. Schulz?

16:21:53 17 A. Can you play it back?

16:21:55 18 Q. I can play it again.

16:21:57 19 A. Thank you.

16:22:20 20 Q. At any time did it appear that
16:22:23 21 Mr. Kistner's son voluntarily walked out into the
16:22:25 22 street?

16:22:25 23 A. It appears as though he was guided by

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16:22:26 1 Officer Schulz.

16:22:28 2 Q. Now, I want you to watch Mr. Kistner's
16:22:35 3 son's right hands and I want you to tell me if at
16:22:40 4 any point it leaves from the right side of his head.

16:22:55 5 At any time did Mr. Kistner's hand leave the
16:22:59 6 right side of his head before Officer Schulz
16:23:05 7 reached across Mr. Kistner's son's body?

16:23:05 8 A. I see his arm away from his head right
16:23:10 9 now at 10:27:15 mark.

16:23:10 10 Q. But would that have been done before or
16:23:13 11 after Officer Schulz reached across Mr. Kistner's
16:23:14 12 son's body?

16:23:14 13 A. It happened so fast and it's pixilated,
16:23:17 14 I can't tell which action was first.

16:23:20 15 Q. I'll play it again and I want you to
16:23:22 16 watch his right hand carefully.

16:23:42 17 Prior to Officer Schulz reaching across
16:23:45 18 Mr. Kistner's son's body, did Mr. Kistner's son's
16:23:49 19 hand ever leave the right side of his face?

16:23:52 20 A. It appears that happened -- it appears
16:23:53 21 as if Officer Schulz's body turns in, the right arm
16:23:59 22 of the subject comes down.

16:24:03 23 Q. When Mr. Schulz turns his body towards

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16:24:07 1 Mr. Kistner's son, Mr. Kistner's son, does
16:24:12 2 Mr. Schulz reach across Mr. Kistner's son's body?
16:24:16 3 MS. HUGGINS: Form.
16:24:16 4 THE WITNESS: I can't tell.
16:24:17 5 BY MR. DAVENPORT:
16:24:18 6 Q. I'll play it again.
16:24:45 7 Prior -- well, in this case when Mr. -- when
16:24:47 8 Mr. Schulz turned his body towards Mr. Kistner's
16:24:50 9 son, did he reach across Mr. Kistner's son's body?
16:24:54 10 A. My answer doesn't change. I can't
16:24:57 11 tell. And it appears to me as if Officer Schulz
16:25:01 12 turns his body, Mr. Kistner's son's arm comes down,
16:25:01 13 his right arm comes down at the same time.
16:25:03 14 Q. Does it appear that Mr. Schulz grabbed
16:25:06 15 something from Mr. Kistner's son?
16:25:09 16 A. I can't tell.
16:25:15 17 Q. Now, I want to play this video again.
16:25:32 18 Now, as this whole exchange is happening between
16:25:36 19 Mr. Schulz and Mr. Kistner's son, I want you to
16:25:40 20 watch and see where are you located at this time,
16:25:56 21 where are you located?
16:25:57 22 A. Top left.
16:25:58 23 Q. Okay. Are you facing the incident at

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16:26:02 1 this point?

16:26:02 2 A. Yes.

16:26:03 3 Q. Okay. Were you facing the incident
16:26:05 4 when Mr. Kistner's son was led out into the
16:26:08 5 driveway or into the street?

16:26:10 6 A. I don't recall.

16:26:31 7 Q. While Mr. Kistner's son is being
16:26:35 8 dragged out into the street, are you facing
16:26:38 9 Mr. Kistner's son and Mr. Schulz?

16:26:40 10 MS. HUGGINS: Form.

16:26:40 11 THE WITNESS: As Mr. Kistner's son is being
16:26:40 12 guided out, what appears to be guided out into the
16:26:43 13 street, I am standing in the middle of the street.
16:26:47 14 I can't tell which way I'm looking and I don't
16:26:49 15 recall.

16:26:49 16 BY MR. DAVENPORT:

16:26:49 17 Q. Okay. Does it appear at this point
16:26:51 18 that Mr. Son -- Mr. Kistner's son was being guided
16:26:56 19 with that exchange right there?

16:26:57 20 And I can replay it again for you.

16:27:01 21 A. I -- I can see it.

16:27:06 22 Q. Is Mr. Kistner's son being guided?

16:27:09 23 A. Mr. Kistner's son looks like he's

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16:27:14 1 pulling away.

16:27:14 2 Q. Does it appear that the officers,
16:27:18 3 Officer Schulz and Officer Moriarity, both have
16:27:21 4 their hands on Mr. Kistner's son?

16:27:24 5 A. At this point it looks like only one
16:27:27 6 officer has their hands on Mr. Kistner's son.

16:27:30 7 Q. At any point does it appear that
16:27:31 8 Mr. Schulz and Mr. Moriarity both have their hands
16:27:33 9 on Mr. Kistner's son?

16:27:33 10 A. Yes.

16:27:34 11 Q. Okay. What are they doing right here?

16:27:40 12 A. They both have their hands on him. I
16:27:44 13 don't know the exact scenario of the situation
16:27:48 14 that's happening. I don't recall it.

16:27:49 15 Q. But you were standing there, correct?

16:27:51 16 A. Correct.

16:27:53 17 Q. And if you thought that there was any
16:27:53 18 incorrect police conduct that was going on at this
16:27:53 19 point, you could have stopped it?

16:27:55 20 A. I could have intervened.

16:27:57 21 Q. Okay. Have you ever taken an
16:27:59 22 individual's cell phone away from them at a police
16:28:03 23 scene, Ms. Velez?

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16:28:08 1 A. I'm trying to think of a specific
16:28:12 2 incident, but I can't recall. I'm sure I have, but
16:28:15 3 I just can't recall anything specific at this time.

16:28:17 4 Q. What reasons would you take away an
16:28:20 5 individual's cell phone at a scene?

16:28:23 6 MS. HUGGINS: Form.

16:28:23 7 THE WITNESS: If we're taking them into
16:28:26 8 custody, we would take their property, they cannot
16:28:29 9 have it if it's evidence.

16:28:30 10 BY MR. DAVENPORT:

16:28:31 11 Q. Was Mr. Kistner's son being taken into
16:28:34 12 custody at this time?

16:28:34 13 A. I don't know what was happening at this
16:28:35 14 time. I don't recall.

16:28:35 15 Q. Was Mr. Kistner's son ever taken into
16:28:39 16 custody at this -- on this day?

16:28:41 17 A. Not that I could recall.

16:28:43 18 Q. Okay. So if Mr. Kistner's son wasn't
16:28:46 19 being taken into custody, why would his cell phone
16:28:48 20 be taken away from him?

16:28:50 21 MS. HUGGINS: Form.

16:28:51 22 THE WITNESS: I don't know that it was taken
16:28:53 23 from him.

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16:28:53 1 BY MR. DAVENPORT:

16:28:54 2 Q. Assuming that a cell phone was taken
16:28:54 3 away from Mr. Kistner's son, why would a cell phone
16:28:57 4 be taken away from him?

16:28:57 5 A. Again, it depends on the situation.

16:28:59 6 Q. Besides if he's being taken into
16:29:02 7 custody, when would -- when would he have his cell
16:29:06 8 phone taken away from him?

16:29:08 9 A. I've already discussed that in
16:29:09 10 different scenarios. If it's evidence, it was used
16:29:11 11 as a weapon. If somebody is using it to obstruct.

16:29:13 12 I'm not -- there's a bunch of different
16:29:14 13 scenarios. It would depend on the circumstance,
16:29:15 14 the situation, the totality of what was happening
16:29:17 15 at the time.

16:29:19 16 Q. How would Mr. Kistner's son have used
16:29:21 17 his cell phone to obstruct what you police officers
16:29:24 18 were doing?

16:29:24 19 MS. HUGGINS: Form.

16:29:24 20 THE WITNESS: I don't know at that time.

16:29:26 21 BY MR. DAVENPORT:

16:29:26 22 Q. Have you ever taken away an
16:29:28 23 individual's cell phone because they were

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16:29:30 1 obstructing what police officers were doing?

16:29:33 2 A. I have not.

16:29:37 3 Q. Now, Ms. Velez -- can we just turn on
16:29:41 4 the -- thank you.

16:30:00 5 Ms. Velez, were you ever paid a witness fee
16:30:05 6 for Mr. Kistner's criminal proceeding?

16:30:07 7 A. A witness fee?

16:30:08 8 Q. Yes.

16:30:09 9 A. No.

16:30:09 10 Q. Okay. Were you paid any sort of a wage
16:30:13 11 involving Mr. Kistner's criminal proceeding for an
16:30:16 12 appearance that you made?

16:30:18 13 MS. HUGGINS: Form.

16:30:19 14 THE WITNESS: I would -- I could get court
16:30:21 15 time if it's on my scheduled day off.

16:30:24 16 BY MR. DAVENPORT:

16:30:24 17 Q. Okay. What is court time?

16:30:27 18 A. It's paid for your appearance at court,
16:30:28 19 it's paid time for your appearance at court.

16:30:30 20 Q. Is that just for criminal matters?

16:30:32 21 A. No.

16:30:32 22 Q. It's for civil matters as well?

16:30:34 23 A. Yes.

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16:30:35 1 Q. Are you being paid a court fee for your
16:30:39 2 appearance today?

16:30:39 3 A. Yes.

16:30:39 4 Q. And is that your normal rate?

16:30:42 5 A. I don't recall exactly what it is.

16:30:44 6 Q. Is today one of your scheduled days off?

16:30:48 7 A. It is.

16:30:49 8 Q. Okay. Are you being paid overtime for
16:30:51 9 your appearance today?

16:30:51 10 A. I know that it's not an overtime rate.

16:30:54 11 Q. Okay. When you appeared for

16:30:57 12 Ms. McDermott's deposition, were you paid an
16:31:01 13 appearance fee or a court fee?

16:31:03 14 MS. HUGGINS: Form.

16:31:04 15 THE WITNESS: I believe I was on duty that
16:31:06 16 day, so, no.

16:31:07 17 BY MR. DAVENPORT:

16:31:07 18 Q. Were you still paid your normal -- your
16:31:09 19 normal duty wage?

16:31:10 20 A. Yes.

16:31:11 21 MR. DAVENPORT: Okay. No further questions.

16:31:24 22 (Deposition concluded at 4:31 p.m.)

23

* * *

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1 I hereby CERTIFY that I have read the
2 foregoing 347 pages, and that they are a true and
3 accurate transcript of the testimony given by me in
4 the above-entitled action on February 26, 2020.

5

6

7

JENNY VELEZ

8

9 Sworn to before me this

10

11 ----- day of -----, 2020.

12

13

14 -----
NOTARY PUBLIC.

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

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LYNNE E. DIMARCO,
Notary Public.

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* Exhibits 24 - 29 retained by Mr. Davenport.

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